

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 10/2019 and CM No. 2714/2019**

Judgment reserved on : 21.01.2019

Date of decision : 07.02.2019

DEEPAK AGGARWAL & ANRAppellants
Through: Mr. Rajiv Tyagi and Mr.Rohit
Gupta, Advocates
versus

SHAKUNTALA DEVI Respondents
Through: Mr.Mayuri Raghuvanshi and
Mr.Vyom Raghuvanshi,
Advocates

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellants No. 1 and 2 vide the present Regular Second Appeal assail the impugned order dated 30.10.2018 of the First Appellate Court of the Additional District Judge-03 (North-West), Rohini Courts in RCA No. 86/2017 vide which the said appeal against the judgment and decree dated 5.9.2017 of the Court of the ACJ-cum-ARC (North-West) in New Suit No. 59269/2016 (Old suit no. 32/2015) was dismissed.

2. Vide the order dated 5.9.2017, the suit filed by Smt. Shakuntala Devi arrayed as the respondent to the present appeal against the

appellants herein arrayed as the defendants to that suit was decreed to the effect:

“ 20. In view of the aforesaid discussion, the application in hand is allowed. Suit of the plaintiff is decreed as under:

a) A decree of mandatory injunction is passed in favour of plaintiff and against the defendants in respect of the suit property. Thus, the defendants are directed to vacate the suit property i.e. First Floor of property bearing no. 160, Harsh Vihar, Pitampura, Delhi. It is directed that the decree of mandatory injunction shall not be executed for a period of three months from today enabling the defendants to shift out on their own/search for alternative accommodation. However, in case of appeal the extension of time shall be subject to the order passed by the Ld. Appellate Court.

a) A decree of permanent injunction is passed in favour of plaintiff and against the defendants thereby restraining the defendant, their agents, associates, representatives etc. from dispossessing the plaintiff from the property bearing no. 160, Harsh Vihar, Pitampura, Delhi.

b) A decree of mesne profit/use and occupation charges at the rate of Rs. 25,000/- p.m. w.e.f. 20.01.2015

till the suit property is vacated by the defendants. The relief qua mesne profit shall be executable only upon payment of requisite court fees by the plaintiff.

No order as to cost.

Decree sheet be prepared accordingly.”

3. The said decree was prepared in terms of the Order XII Rule 6 of the CPC on the basis of the pleadings and the material available on record on an application filed by the plaintiff dated 3.4.2017 which was disposed of vide order dated 5.9.2017. Through the application under Order XII Rule 6 CPC, the plaintiff, i.e., the respondent herein had stated that on the basis of the defence that had been taken by the defendants to the said suit, i.e., the appellants herein, in their written statement filed in the instant case, the defendant No.1 i.e., the appellant No.1 herein, had filed a suit for partition bearing CS(OS) No. 2711/2015 titled ***Sh. Deepak Aggarwal v. Sh. Raj Goyal & Others*** which was dismissed in *limine* by this Court vide order dated 28.10.2015. Through her application under Order XII Rule 6 of the CPC, the plaintiff i.e., the respondent had stated that apart from the dismissal of the suit CS(OS) No. 2711/2015 by this Court, it was submitted by the appellants i.e., the appellants herein, that the pleas of defendant No.1 i.e., the appellant herein in relation to the aspect of the property in question, being an HUF property had been rejected and it had been observed vide para 10 of the order to the effect:

“In view of the above, so far as the property which are purchased by means of

title papers in the name of defendant No. 2/Smt. Shakuntala Devi or the defendant No. 2/Smt. Shakuntala Devi jointly with Sh. Brijesh Garg/defendant No.14 or any other defendants are concerned, these properties would be the properties of these persons and plaintiff (defendant No. 1 herein) cannot claim any rights to these properties. The suit seeking partition and possession of these immovable properties is therefore dismissed.”

4. The respondent to the present appeal i.e., the plaintiff of the suit had filed a caveat No.58/2019 and was represented by a counsel and was heard on the date of hearing on 21.1.2019 in the present RSA 10/2019 and the caveat was thus discharged.

5. The suit that has been filed by the plaintiff i.e., the respondent herein was one for permanent and mandatory injunction with the prayers to the effect:

“ 1. Pass a decree of mandatory injunction in favour of the plaintiff and against the defendants thereby directing the defendants to vacate the first floor of property bearing no. 160, Harsh Vihar, Pitampura, Sarawati Vihar, Delhi.

2. Pass a decree of permanent injunction in favour of the plaintiff and against the defendants therefore restraining the defendants and their agents, associates. Assignees, employees etc. from dispossessing the plaintiff from property bearing no. 160, Harsh Vihar, Pitampura, Saraswati Vihar, Delhi.

3. Direct the defendants to pay a sum of Rs.25,000/- per month as usage/occupation charges

and mesne profit from 20.01.2015 till the date of vacating the suit property.”

6. The plaintiff i.e., the respondent to the present appeal is the mother of the appellant No.1 and the mother-in-law of the appellant No. 2 who is wife of the appellant No.1. The plaintiff i.e., the respondent to the present petition, is the owner of the property bearing No. 160, Harsh Vihar, Pitampura, Saraswati Vihar, Delhi in which the appellants No.1 and 2 herein reside on the complete first floor of the said suit property and it is the said first floor of property bearing No. 160, Harsh Vihar, Pitampura, Saraswati Vihar, Delhi, which forms the suit property, in as much as admittedly, as brought forth through the written statement of the defendants No.1 and 2 i.e., the appellants No. 1 and 2 herein, the suit property was purchased by Sh. Duli Chand, the father of the appellant No.1 and the husband of the plaintiff to the said suit, i.e., the respondent to the present petition in the name of the respondent/plaintiff. The appellants contend that the same was a Benami transaction and that the appellant No.1 is the joint owner of the said property which has been purchased by his father Sh. Duli Chand and that the construction of the 2 ½ storeys on the said property were raised from the joint business of the family.

7. The plaintiff i.e., the respondent to the present appeal through her plaint had stated that she was being physically abused, tortured and harassed by the defendants, i.e., the appellants herein since 5.7.2012 and that they had been pressurizing her to transfer the said property and her other assets in their name and had also been threatening her inter alia with dire consequences if she did not follow

their instructions. The plaintiff i.e., the respondent herein had claimed that she had permitted the defendants i.e., the appellants No.1 and 2 herein, to live in the suit property as a licensee and they are occupying the entire first floor of the suit property which could result into rental of Rs.35,000/- per month but that the plaintiff i.e., the respondent herein was claiming only Rs.25,000/- as monthly usage and charges as mesne profits from the defendants i.e., the appellants herein. The plaintiff i.e., the respondent herein further submitted through her plaint that because of the intolerant behavior of the., defendants, i.e., the appellant herein towards her, she, i.e., the plaintiff i.e., the respondent herein, had been constrained to sever all her ties with them for which she issued a public notice dated 9.11.2014 in the daily 'Viraat Vaibhav' and that she has also filed a complaint under Section 12 of the Protection of Women from the Domestic Violence Act, 2005, against the defendants i.e., the appellants herein which proceedings were stated to be pending. The plaintiff further submitted through her application under Order XII Rule 6 of the CPC in CS (OS) No. 2711/2015 that she was not earlier aware of the dismissal of the suit of which she learnt lateron.

8. The plaintiff i.e. the respondent herein, further submitted that she had filed a complaint against the defendants i.e., the appellants herein and the relative of defendant No.1 to the SHO and the ACP, District (North-West) and that she had also thereafter made several requests to the defendant i.e., the appellants herein to vacate the premises/suit property which was however completely ignored by the defendants, i.e., the appellants herein and as they started creating more

problems for her and said that they would throw her out. The plaintiff i.e., the respondent herein through her plaint contended that she had issued a legal notice dated 14.1.2015 through her counsel to the defendants thereby revoking the licence granted to them directing them to vacate the premises within 15 days from the date of the receipt of the legal notice but the defendants i.e., the appellants herein had not bothered to reply to the same nor have they vacated the same and after the receipt of the legal notice had started bringing anti-social elements, inter alia, to the suit property to pressurize the plaintiff i.e., the respondent herein to withdraw the legal notice and that the father and the brother of the defendant No.2, i.e., the appellant No.2 herein, also told the plaintiff, i.e., the respondent herein that the defendant No.1 had got all the papers of transfer of properties of the plaintiff i.e., the respondent herein and that she could be ousted from her properties in time.

9. The defendant i.e., the appellants herein, through their written statement dated 25.3.2015 before the learned Trial Court, apart from contending that there was no cause of action against them contended that the suit property is an HUF property and that the plaintiff i.e., the respondent herein was a Benami Owner and that the plaintiff i.e., the respondent herein was a house wife from the date of her marriage and the suit land had been purchased by the father of the appellant No.1 i.e., the husband of the plaintiff and all the investments being the costs of land and the construction costs were all paid through the joint family business of the parties in as much as the plaintiff i.e. the respondent herein had no independent income of her own and that the

defendant No.1 i.e., the appellant No.1 was living in the suit property with his wife who is appellant No.2 herein as joint owners of the suit property. The defendants i.e., the appellants herein through their written statement before the learned Trial Court denied that they had been torturing the respondent, i.e., the plaintiff to the said suit in any manner and reiterated their contentions that the appellants No.1 i.e. the defendant No.1 was a joint owner of the suit property and other properties jointly in the name of the family members and that the appellant No.1 was claiming from the plaintiff and other legal heirs of late Sh. Duli Chand and from Kanwarsain, partition of all the properties by filing a suit for partition and rendition of accounts. *Inter alia* the defendant Nos. 1 and 2 to the said suit, i.e., the appellant herein, contended that the respondent was playing in the hands of Mr. Raj Aggarwal, the younger brother of the appellant No.1 aged 30 years and was thus trying to grab the properties left behind by late Sh. Duli Chand, the husband of the respondent and father of the appellant No.1. The defendants i.e., the appellants herein also denied that they had been threatening the plaintiff in any manner. *Inter alia* the appellants herein contended through their written statement that there was no question of payment of licence charges per month or payment of Rs.25,000/- as monthly usage charges and *mesne* profits. The defendants No.1 and 2 i.e., the appellants herein through their written statement had stated that the plaintiff i.e., the respondent herein had no right to ask the defendants, i.e., the appellants herein to vacate the suit premises which was jointly owned by the appellant No.1. *Inter alia* the appellants herein i.e., the defendants No.1 and 2 denied the receipt

of any notice from the plaintiff terminating their licence and reiterated that the appellant No.1 was an owner of the property in suit.

10. Reliance was placed on behalf of the plaintiff i.e. qua the application under Order XII Rule 6 CPC on the verdict of the Hon'ble Supreme Court in ***Karan Kapahi &Ors. v. M/s Lal Chand Public Charitable Trust & Anr.***: AIR 2010 SC 2077 with observations therein to contend that Order XII Rule 6 of the CPC 1908, as amended, enables the Court to give a judgment not only on the application of a party but on its own motion and that it is thus clear that the amendment to Order XII Rule 6 of the Code of Civil Procedure, 1908 brought about to further the ends of justice and give these provisions a wider sweep by empowering Judges to use it '*ex debito justitiae*,' a Latin term, meaning 'a debt of justice'. It was contended on behalf of the plaintiff i.e., the respondent herein, that the thrust of the amendment is that in an appropriate case, a party on the admission of the other party, can press for judgment, as a matter of legal right, though, the Court always retains its discretion in the matter of pronouncing judgment and that if the provision of Order XII Rule 1 is compared with Order XII Rule 6, it becomes clear that the provision of Order XII Rule 6 is wider in as much as the provision of Order XII Rule 1 is limited to admission by 'pleading or otherwise in writing but in Order XII Rule 6, the expression 'or otherwise', is much wider in view of the words, used therein namely, admission of fact either in pleading or otherwise, whether orally or in writing."

11. It was thus submitted by the learned counsel for the plaintiff that the facts which have been decided by the Hon'ble High Court,

need not be proved, by leading evidence, before the Trial Court, hence the plaintiff or the defendants have no right to lead any evidence, in support of their case and the suit was liable to be decreed summarily, as held in case titled ***S.P. Chengalvaraya (D) vs. Jaganath (D)***, 1994 Rajdhani Law Reporter (SC) 102 contending that in the said judgment, it has been held that a person whose case is based on falsehood can be summarily thrown out at any stage of litigation and that rules cannot be reduced to absurdity to become engine of fraud by dishonest litigants.

12. Through the reply to the application under Order XII Rule 6 CPC, the defendants No.1 and 2 i.e., the appellants herein opposed the said application and contended that they had not admitted any of the facts averred in the plaint by the plaintiff, i.e., the respondent herein. The learned Trial Court vide the dated 5.9.2017 has observed to the effect that the plaintiff along with the suit had filed a copy of the conveyance deed of the property bearing No. 160, Harsh Vihar, Pitampura, Delhi of which the suit property was a part and that the authenticity of the conveyance deed was not challenged by the defendants i.e., the appellants herein.

13. The observations in para 10 of the judgment dated 28.10.2015 of this Court were referred to by the learned Trial Court to the effect:

“9. In para No.10 of order dt. 28.10.2015, Hon'ble High Court observed as under:

“10. In view of the above, so far as the properties which are purchased by means of title papers in the name of defendant no.1 (plaintiff herein) or the defendant no.2 jointly with Sh. Brijesh Garg/defendant

no.14 or any of the defendant are concerned, these properties would be the properties of these persons and plaintiff cannot claim any rights to these properties. The suit seeking partition and possession of these immovable properties is therefore dismissed."

10. The description/particulars of the properties which were sought to be partitioned before the Hon'ble High Court are mentioned in para no. 5 of the order dt. 28.10.2015. In para 11 of the said order, the suit property i.e. 160, Harsh Vihar, Pitampura, Delhi has been held to be covered as per observations in para 10 wherein specifically it has been mentioned that such properties would be the properties of Ms. Shakuntala Devi/plaintiff."

14. It was also observed vide the said order dated 5.9.2017 that in para 11 of the order dated 28.10.2015 of this Court, the said property bearing No. 160, Harsh Vihar, Pitampura, Delhi had been held to be covered vide observations in para 10 wherein it had been mentioned that the said property was of the plaintiff i.e., the respondent herein, of the suit, i.e., Shakuntala Devi.

15. The said order 28.10.2015 of this Court in CS (OS) No. 2711/2015 was admittedly not challenged by the appellants herein till the date 5.9.2017 and was thus held vide order dated 5.9.2017 to have attained finality. The learned Trial Court thus held that the defence of the defendant i.e. the appellants herein that the suit property was an HUF and that they were co-owners no longer subsists and not challenging the order of this Court dated 28.10.2015 amounted to an unequivocal admission by the defendants i.e., the appellants herein regarding the status of the plaintiff qua the suit property.

16. Reliance was placed in the impugned judgment on the verdict of the Hon'ble Supreme Court in ***Raveesh Chand Jain v. Raj Rani Jain***; CA No. 1822 of 2015 (Arising out of SLP (C) No.29805 of 2014) in which the Hon'ble Supreme Court had held that Order XII Rule 6 CPC confers a wide discretion on the Court to pass the judgment at any stage of the suit on the basis of admission of facts made in pleadings or otherwise and that the principle behind Order XII Rule 6 of the CPC is to give the plaintiff a right to speedy judgment so that either party could take advantage of rival claims which are not in controversy.

17. The learned Trial Court thus held to the effect:

“ 13. The admissions for the purpose of order 12 rule 6 CPC need not be explicit. Inference can be drawn on the basis of averments made in the pleadings. When the only defence taken by the defendant has been taken away by the order of Hon'ble High Court, which has not been challenged, it is deemed to be an admission for the purpose of their title to the suit property. Accordingly, the contention of the Ld. Counsel for the defendants that no admission of facts have been made by them and as such, the application is not maintainable is misconceived. In view of the same, the status of the defendants is nothing else but that of licencees only.”,

thus observing that the appellants herein were merely licencees.

18. It was also observed by the learned Trial Court vide its impugned order that in view of the judgment of this Court in ***Virender Kumar & Anr. Vs. Jaswant Rai & Anr*** (RSA no. 46/2011 decided on 10.3.2011) to the effect:

“ That mere construction of superstructure cannot give rise to an interest in the land beneath the superstructure. It was further held that the defendants objection that the plaintiffs should have filed a suit for possession and not a suit for mandatory injunction is also without any merits because a suit for mandatory injunction lies against a licensee after the license is revoked. It was further held that however, a licence's possession is only permissive and he can be thrown out any time. As per Section 52 of the Indian Evidence Act, 1882, License is defined as under:

"5 2. " Licence" defined- Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence. It is further held that "but relation between the plaintiff and defendant no. 1 is not of a licensor-licensee in its strict sense. It was further held that concept of permissive possession is different from concept of a licensor. A child lives with his parents in the house of the parents under a permissive possession and not strictly as a licensee. No rights akin to the rights of the licensee are available to a child. (Ramesh Kumar Handoo Vs. Binay Kumar Basu: RSA 286/07 dated 19.11.2007)".

19. *Inter alia* the learned Trial Court held that the defendants i.e., the appellants herein and their children had no legal right and neither they could claim any right in derogation to the rights of the plaintiff, and that there is no relationship or any legal right which warrants adjudication. The learned Trial Court also repelled the contention of the defendants i.e., the appellants herein, that the suit was grossly

under valued observing to the effect that the plaintiff had only sought the ejectment of the defendants/her licensees, i.e., appellants herein, who had been threatening her and that there was no need to file a suit for possession or even to value the suit on the basis of market rates.

20. *Inter alia* the learned Trial Court held that the notice of termination of licence had been served on the defendant i.e., the appellants on 14.1.2015 but they chose not to reply to the same. Reliance was also placed by the learned Trial Court on the verdict of this Court in ***Sachin &Anr. Vs. Jhabbu Lal &Anr.***, RSA 136/2016 and CM no. 19123/2016 decided on 24. 11.2016, wherein it was held to the effect:

"14 The respondent no. 1 and 2/plaintiffs may not have proved themselves to the owner of the suit property as may be established in a case of acquiring title under a registered sale deed but surely they would have better rights/entitlement to seek possession of the suit property from his sons who were permitted to, live on the first floor only out of love and affection towards them.

15. Where the house is self acquired house of the parents whether married or unmarried, has not legal right to live in that house and he can live in that house only at the mercy of his parents up to the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life."

21. The learned Trial Court thus observed to the effect that the defence put forth by the defendants was not such that the matter be put to trial and that the carrying on with the trial would be an exercise in

futility and would bring more pain and agony to the plaintiff who at this stage of her life has to fight her own son for getting peace in her life and that the facts of the case are not such as would warrant a trial and that the defendants have been unable to show their right, title or interest over the suit property but that, however, in case the defendants, i.e., the appellants were able to get any declaration of their title as a co-owner, they could always be put back in possession.

22. As regards the claim qua monthly usages and occupation charges and mesne profits @ Rs.25,000/-, the learned Trial Court observed to the effect that the defendants, i.e., the appellants herein had been held to be mere licencees and not owners of the suit property and that the rate of Rs.35,000/- as monthly rent had not been refuted by the defendants i.e., the appellants herein but the plaintiff had claimed only Rs.25,000/- per month and thus the same having not been denied by the defendants was deemed to have been admitted and in as much as the licence of the defendant had been terminated vide the notice dated 14.1.2015 they were liable to pay the usage/occupational charges for continuing in occupation thereof.

23. The order dated 28.10.2015 of this Court in CS(OS) 2711/2015 which suit was filed by the appellant No. 1 herein is on the record with the present appeal as Annexure-10. Paragraph 5 of the said order reads to the effect:

“ 5. As per the amended plaint filed, plaintiff seeks the relief of partition for a total of 16 immovable properties which are contained at serial nos.1 (1) to 1(7), 1(9), (11) to 1(16), 1(18) and - 1(19) of the prayer clauses of the plaint. Properties at serial

nos.1 (8) & 1(17) are shares and bonds, serial nos.1 (10) & 1(20) pertains to sale proceeds of immovable properties already disposed of and the property at serial no.1(21) is of family jewellery. These 21 properties, 16 of which are immovable properties of which partition is sought, as stated in the prayer clause are as under:-

<i>Sr. No.</i>	<i>PARTICULARS OF PROPERTY</i>	<i>SHARE OF PLAINTIFF</i>
1.	Flat No.8262-8263, New Anaj Mandi, Filmistan, Delhi.	One by Sixteen
2.	H. No. 4522, Jai Mata Market, Tri Nagar, Delhi-35 (136 Sq. Yards) having plot number 73 out of Khasra No. 165 village Chowki Mubarkabad, Delhi, abadi known as ram nagar, Tri Nagar, Delhi -110035	One by sixteen
3.	H. No. 2790 Onkar Nagar, Tri Nagar, Delhi-35 (100 sq.yards) earlier plot No.4 out of Khasra No. 627/170, village Chowkri Mubarkabad, Delhi, colony known as Onkar Nagar, Tri Nagar, Delhi.	One by sixteen
4.	Flat No. 8260-8261, New Anaj Mandi, Filmistan, Delhi-6	One by forty eight
5.	H. No. 3359, Jai Mata Market, Tri Nagar, Delhi (100 Sq. yards)	One by sixteen
6.	<u>160, Harsh Vihar, Pitampura, Delhi-34 (200 Sq. yds)</u>	One by eight
7.	C-402, Karan Vihar, part-III, forming part of plot No.5 Khasra No. 525, Suleman Nagar, Kirari, Delhi-86	One by eight
8.	Shares and bods of around Rs.5 lakhs	One by eight
9.	Shop No. 8288/1, New Anaj Mandi, Filmistan,	One by eight

	<i>Delhi-11006</i>	
10.	<i>Sale proceed of 6 lacs of tenancy right 8399, New Anaj Mandi bara Hindu Rao Filmistan, Delhi and 11 machinery and goodwill</i>	<i>One by eight</i>
11.	<i>B-371, Hari Enclave, Part-II, out of Khasra No. 525, Kirari Suleman Nagar, Delhi-110086 admeasuring about 110 Sq. yds. (Plot no. 16 Khasra No. 525, Kirari, EX-2, Delhi.)</i>	<i>One by eight</i>
12.	<i>Plot no. C-415, Karan Vihar, Part-III, out of plot no. 233, Khasra no. 534, Kirari, Suleman Nagar, Delhi-110086 admeasuring about 110 sq. yds.</i>	<i>One by eight</i>
13.	<i>Plot no. 17 out of Khasra No. 528, Kirari, Suleman Nagar, Ex-2, Delhi 110086 admeasuring about 200 sq. yds.</i>	<i>One by eight</i>
14.	<i>Plot no. 32 out of Khasra No. 526, Kirari, Suleman Nagar, Delhi-110086 admeasuring about 200 sq. yds.</i>	<i>One by eight</i>
15.	<i>Plot no.C-21, Khasra No. 45, BudhVihar, Phase-II, Delhi admeasuring about 200 sq. yds.</i>	<i>One by eight</i>
16.	<i>Plot no. O-1/33, Khasra no. 83, BudhVihar, Phase-I, Delhi admeasuring about 100 sq. yds present market value of the property is about Rs.75 lakhs</i>	<i>One by eight</i>
17.	<i>Shares and bonds of about 10 lakhs</i>	<i>One by eight</i>
18.	<i>Plot No. B-388, Hari Enclave, Part-II Out of Khasra No. 525, Kirari Suleman Nagar, Delhi-86 (200 sq. yards).</i>	<i>One by sixteen</i>
19.	<i>One plot out of Khasra No. 528, Kirari Suleman</i>	<i>One by sixteen</i>

	Nagar, Delhi-86 (200 Sq. yards)	
20.	Sale proceeds of two plots bearing number G-27/149-150, Sector-3, Rohini, Delhi-110085 for around 49 lakhs, and another plot no. 246 out of khasra no.159 at Sheeshmahal Enclave, Kirari admeasuring 250 sq. yds for around 68 lakhs	One by eight
21.	Family jewellery valuing about Rs.1 crore	One by eight

(emphasis supplied)

24. Paragraph 6 of the said order reads to the effect:

“ 6. So far as the immovable properties falling between serialnos.1(11) to 1(16) are concerned, they are admittedly purchased, as per averments made in the plaint, by means of title documents in the name of defendant no.2/Smt. Shakuntala Devi and who is the mother of the plaintiff. Once title documents exist in favour of a particular person i.e Smt. Shakuntala Devi/defendant no.2, it is Smt. Shakuntala Devi who. would be the owner of such properties unless it is averred in the plaint as to how an HUF existed or was created. However, there are no averments in the plaint as to how an HUF existed or was created, and which aspect in detail is dealt with hereinbelow.”

(emphases supplied)

25. Observations in para 7, 8, 9, 10 and 11 of the order dated 28.10.2015 of this Court are categorical to the effect:

“7. As per the facts of the present case, grandfather of the plaintiff is Sh. Tulsi Ram, and who admittedly died on 26.2.1983 i.e after passing of the Hindu Succession Act, 1956. It is now settled

law that if a person dies after passing of the Hindu Succession Act, 1956, and properties owned by the deceased are inherited by his male successors-in-interest, then, the male successors-in-interest take the properties as self-acquired properties and not as HUF properties. The only exception to this position is that an HUF being created for the first time after 1956 by throwing property or properties in common hotchpotch. This is the law in view of the ratio laid down in the two judgments of the Supreme Court in the cases of Commissioner of Wealth Tax, Kanpur and Others Vs, Chander Sen and Others, (1986) 3 SCC 567 and Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204. The relevant para of the judgment in the case of Yudhishter (supra) reads as under:-

"10. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. MANU/SC/0265/1986 MANU/SC/0265/1986:

[1986]161ITR370(SC) where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of, his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and

grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Karta of his own undivided family but takes it in his individual capacity. At pages 577 to 578 of the report, this Court dealt with the effect of Section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn. pages 924-926 as well as Mayne's on Hindu Law 12th Edition pages 918-919. Shri Banerji relied on the said observations of Mayne on 'Hindu Law', 12th Edn. at pages 918-919. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court the Madhya Pradesh High Court and the Andhra Pradesh High-Court appeared to be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn. page 919. In that view of the matter, it would be difficult to hold that property which developed on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a-vis his own sons. If that be the position then the property

which developed upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house."

8. Therefore, once the grandfather Sh. Tulsi Ram died on 26.2.1983 and the father of the plaintiff Sh. Duli Chand died on 20.8.1991, inheritance by Sh. Duli Chand of the properties of Sh. Tulsi Ram would be as self-acquired properties by Sh. Duli Chand, and these properties would not be HUF properties in the hands of Sh. Duli Chand for the male successors-in-interest of Sh. Duli Chand to have a right in the same by birth. Plaintiff therefore can claim no rights in the properties of his father Sh. Duli Chand allegedly on the ground of HUF properties once these properties would be self-acquired properties in the hands of Sh. Duli Chand as they have been inherited by Sh. Duli Chand from Sh. Tulsi Ram only in the year 1983 i.e. after passing of the Hindu Succession Act, 1956 and as read with the ratios of the judgments of the Supreme Court in the cases of Chander Sen and Others (supra) and Yudhishter (supra).

9. Let us now examine the general averments of the plaint as to whether it is stated that Sh. Tulsi Ram or Sh. Duli Chand created an HUF for the first time by throwing properties in common hotchpotch. It is sine qua non upon the plaintiff to aver in the plaint of creation of an HUF by throwing the properties in common hotchpotch and only on which basis an HUF can come into existence after passing of the Hindu Succession Act in 1956. General averments

that properties are family properties or that businesses were carried out for the benefit of the family cannot in law result either in averments constituting a cause of action of HUF properties or in creation of an HUF, and which is only created/pleaded to exist on the mentioning of a specific date/month/year when an HUF is created for the first time by throwing the properties in common hotchpotch. The plaint is conspicuously silent as regards any averments of either Sh. Tulsi Ram or Sh. Duli Chand creating an HUF after the year 1956 by throwing the properties into common hotchpotch. The only averment is that businesses were carried on for the benefit of the family members and properties were purchased for the benefit of family members and which averments in law do not create or show a cause of action existing of an HUF being created by throwing the properties in common hotchpotch. Also, there are no averments in the plaint as to the properties being shown as HUF properties either in the house tax record or in income tax record or any other public record whatsoever.

*10. In view of the above, so far as the properties which are purchased by means of title papers in the name of defendant no.2 or the defendant no.2 jointly with Sh. Brijesh Garg/defendant no. 14 or any other defendant are concerned, these properties would be the properties of these persons and plaintiff cannot claim any rights to these properties. **The suit seeking partition and possession of these immoveable properties is therefore dismissed.** (emphasis supplied)*

11. The aforesaid discussion will cover immovable properties falling within serial nos.1(4) to 1(7), 1(9), 1(11) to 1(16) and 1(18) and 1(19) of the prayer clause in the plaint. Properties nos.1(11) to

1(16) are of the mother/defendant no.2 and in whose name the title papers exist as per the averments in the plaint and the two properties being at serial nos.1(18) and 1(19) of the prayer clause in the plaint are owned by the defendant nos.2 and 14 and in whose name the property papers exist as per the plaint. Accordingly, the suit seeking the relief of partition of these properties is dismissed as plaintiff does not have any right to these properties inasmuch as no HUF is shown to exist.” **(emphasis supplied)**

26. Thus the suit filed by the appellant No.1 herein in CS(OS) No. 2711/2015 seeking partition of the property, i.e., 160, Harsh Vihar, Pitampura, Delhi, measuring 200 sq. yards to the extent of 1/8th share of the said property was dismissed vide order dated 28.10.2015 of this Court of CS(OS) 2711/2015 observing to the effect that the plaintiff of the same i.e. appellant No.1 herein did not have any right in these properties in as much as no HUF was shown to have existed.

27. Vide paragraph 16 of the said verdict, it was observed to the effect:

“ 16. In view of the above, the suit is dismissed so far as the cause of action seeking partition on the ground that the properties are "family properties" is concerned, inasmuch as there is no concept of family properties and an HUF does not exist as required by law for the plaintiff to claim a right in the properties on the ground that these properties are HUF properties. So far as the properties which are said to have been owned by the father Sh. Duli Chand are concerned, the plaintiff on making averments with respect to a complete cause of action, the plaintiff will be entitled in accordance with law to file a fresh suit. Suit is

dismissed and disposed of in terms of the aforesaid observations.”

28. Vide order dated 3.11.2017 Review Petition No. 465/2017 filed by the appellant No.1 herein as the applicant/plaintiff seeking review of the order dated 28.10.2015 in CS(OS) No.2711/2015 was dismissed holding that it was time barred and further that there was no error on the face of the record for reviewing the judgment dated 28.10.2015 vide order dated 20.12.2017 in RFA (OS) No. 50/2017. **The Regular First Appeal filed by the appellant No.1 herein as appellant thereof against the judgment dated 3.11.2017 in the review petition No.465/2017 seeking the review, modification and clarification of the judgment and order dated 28.10.2015 in CS(OS) No. 2711/2015 was sought to be withdrawn by the appellant thereof, i.e. appellant No.1 herein, seeking leave to withdraw the said appeal with liberty to agitate all the legal submissions that may be available to the applicant in the subsequent suit and the said appeal i.e. RFA (OS) No. 50/2017 along with all the pending application were however dismissed as withdrawn whilst reserving liberty to the appellants herein to agitate all legal submissions as may be available to him in other proceedings in accordance with law.** It is also essential to observe that the learned counsel for the appellants of RFA i.e., the learned counsel for the appellant No. 1 of the present appeal, appearing on behalf of the appellant of RFA (OS) No. 50/2017 had stated that subsequent upon the dismissal of the said suit i.e. CS(OS) 2711/2015, a fresh suit seeking a relief of declaration, partition, permanent and

mandatory injunction and consequential relief had in fact been instituted by them.

29. The appellants herein assailed the said judgment and decree dated 05.09.2017 of the learned Trial Court vide an appeal RSA86/17 which was dismissed. The observations of the First Appellate Court therein in Para 7, 8, 9, 10, 11, 12, 13, 14 & 15 read to the effect:-

“ 7. As per provisions of Order 12 Rule 6 CPC, the Court may at any stage of a 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 give such judgment as it may think fit having regards to the admissions of fact made in the pleading or otherwise. It is settled by a catena of judgment including the laws relied upon by the parties that the admission of the defendant must be unequivocal and unambiguous and it is required to read the pleadings as a whole and the court cannot read one sentence from here and there treating the same admission.

8. Recently the Hon'ble High Court of Delhi has dealt with the question of power of the court under Order XII Rule 6 of CPC in case of A.N. Kaul vs Neerja Kaul and Another CRP 189 of 2017 decided on 03-07-2018 and held that :

"10. The reasoning given in the impugned order, of the petitioner/plaintiff, in the absence of express admission, being not entitled to a decree on admissions is indeed faulty and without considering a series of judgments of this Court. In Ashoka Estate Pvt. Ltd. Vs. Dewan Chand Builders Pvt. Ltd.159 (2009) DLT 233, reiterated in judgment dated 14th September, 2017 in C.R.P. No. 190 of 2015 titled Vireet Investments Pvt. Ltd. Vs. Vikramjit Singh

Puri and again reiterated in Bhupinder Jit Singh Vs. Sonu Kumar 2017 SCC OnLine 11061, it was held (i) that the plaintiff, if otherwise found entitled to a decree on admission, cannot be deprived thereof by astute drafting of the written statement and/or by taking pleas therein which have no legs to stand upon; (ii) the Court is to read the pleadings of the parties meaningfully; (iii) issues are to be framed on 'material' and not on all propositions of law and fact; (iv) a plea, which on the face of it is found by the court to be untenable, does not require the framing of any issue. In Adarsh Kumar Puniyani Vs. Lajwant iPiplani 2015 SCC OnLine Del 14022 it was held that material propositions of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved; if a plea is not valid and tenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time. Reliance was inter alia placed on Abbot India Ltd. Vs. Rajinder Mohindra (2014) 208 DLT 201 holding that once it is found that there was no defence, merely because a bogey thereof is raised at the stage of framing of issues or upon the respondents/plaintiffs filing an application under Order XII Rule 6 of the CPC, would not call for framing of an issue. It was further held in Bhupinder Jit Singh supra that issues are to be framed only on

material propositions of law or fact requiring trial and not on all propositions of fact or law which may be contained in the pleadings and which are not material i.e. on the outcome whereof the outcome of the suit does not depend. The Court is not obliged to, on finding pleas to have been raised in the written statement, mechanically frame issues thereon. If issues were to be framed in such manner, the same would be in disregard of the word 'material' in Order XIV Rule 1 of the CPC. The enquiry thus to be made at the time of framing of issues is, whether the pleas raised in the written statement, purportedly in defence to the claim in the plaint have any material bearing to the outcome of the suit and if it is found that irrespective of the findings thereon, the plaintiff would be entitled to the relief the parties are not to be put to trial in the suit. Similarly in Zulfiqar Ali Khan Vs. Straw Products Ltd. 87 (2000) DLT 76, it was observed that it is a notorious fact that to drag the case, a litigant often takes all sorts of false or legally untenable pleas and it was held that legal process should not be allowed to be misused by such persons and only such defence as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or malafide based on false or untenable pleas, to delay the suit. It was yet further held that the Court is not bound to frame an issue on unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time. Reference in this

regard may also be made to Kawal Sachdeva Vs. Madhu Bala Rana 2013 SCC OnLine 1479 and to P.S. Jain Co. Ltd. Vs. AtmaRamProperties (P) Ltd. (2013) 205DLT302.

11. Not only so. Order XV of the CPC empowers the Court to, upon finding that the parties are not on an issue of any question of law or fact, pronounce judgment at once. Thus even if there is no express admission in the written statement but an intelligent reading of the written statement shows the propositions or pleas taken to be not material and no issue to be arising therefrom, the Court is still entitled to pass a decree forthwith."

9. In the present case, it is the plea of the respondent that she is the -absolute owner of the suit property in which the appellants were permitted to live being her son and daughter-in-law. On the other hand, the appellants have claimed that the property was purchased by the husband of the plaintiff in her name from the funds of joint family and as such the property is HUF property in which the appellant no. 1 has share after death of his father. It is admitted case that the appellant no. 1 filed suit claiming the property as HUF property which was dismissed by the Hon'ble High Court vide orders dated 28-10-2015 and that the said order has attained finality as the appellant has not challenged it. The learned Trial Court has dealt with the said order and came to findings that not challenging the order amounts to unequivocal admission by the defendants regarding the status of the plaintiff qua the suit property. Moreover, it is admitted case that the title documents of the suit property are in the name of the plaintiff. The provisions of Benami Transactions (Prohibition) Act, 1988 allowed an individual to purchase an immovable

property in the name of his wife for her benefit. Thus, mere averment that the property is HUF property is not sufficient to frame issue and calling parties to bring evidence to prove it. The party claiming is required to plead about the existence of an HUF after 1956 and about its income. The appellants in the suit have not pleaded anything except the bald assertions that the property is HUF property. There is no pleading in regard to existence and details of the HUF and its income. Thus, the pleadings qua the nature of the suit property are not sufficient to frame issue and to enter into along trial. The relationship between the parties to the suit is not denied and the appellants are not having any title documents in their favour in regard to the suit property.

10. It is alleged that the learned Trial Court has decreed the suit for possession in a suit filed for mandatory injunction. The relevant order is reproduced as under:

"A decree of mandatory injunction is passed in favour of plaintiff and against the defendants in respect of the suit property. Thus, the defendants are directed to vacate the suit property i.e. First Floor of property bearing no. 160, Harsh Vihar, Pitampura, Delhi."

11. Thus, the order is clear that a decree of mandatory injunction is passed and the defendants are directed to vacate the suit property and there is no order that the plaintiff is entitled to get the possession of the suit property from the defendants. Accordingly, the plea of the appellants in this regard is not tenable.

12. The plaintiff is in the possession of the part of the property and is having apprehension that she will be dispossessed from it at the hands of the defendants/appellants. The plaintiff's possession is legal and thus the orders of the learned Trial Court passing the decree of permanent injunction is without

any fault as the owner of the property is entitled to protect her possession and to prove her apprehension no evidence is required.

13. The plaintiff averred in the plaint that the defendants are occupying the entire first floor of the property for which the normal rate of rent at the prevailing rates can fetch a rent of upto Rs. 35,000/- per month, however, she is claiming only 25,000/- as monthly usages/occupation charges and mesne profits from the defendant. The appellants in their written statement has challenged the right of the plaintiff to claim the charges but has not specifically denied the averment that the property can fetch Rs. 35,000/- as rent. It is settled principle of law that an averment not denied specifically amount admission and to prove the admission no evidence is required. The learned Trial Court has dealt with the admission in this regard and has rightly found the defendants liable to pay the usage/occupation charges.

14. The appellants have taken a plea that the property is having market value more than Rs. 1.5 Crore and the requisite court fee is not paid on the market value. The plaintiff is master of her suit and is duly empowered to value the plaint as per relief of injunction claimed and the market value of the property for which injunction is sought is not relevant and the court cannot challenge the valuation given by the plaintiff. In the facts the value given by the plaintiff is to be accepted by the court. The plaintiff has paid the court fee on the valuation for the reliefs of injunction and the court has directed the plaintiff to pay the court fee on the relief of usage charges. Thus, the appeal on this ground also is without merits,

15. For the reasons stated above the appeal is dismissed being devoid of merits and the judgment and decree passed by the learned Trial Court dated 05-09-2017 is upheld. No orders as to Cost. Decree Sheet be prepared. Copy of orders be sent to the

*learned Trial Court /Successor Court for information.
File be consigned to record room.”*

30. This being the Regular Second Appeal, the ingredients of Section 100 of the CPC, 1908 (as amended) have essentially to be in existence for invocation of the said provision Section 100(4) of the CPC, 1908 (as amended) provides as follows:-

“100. Second Appeal.—(1)

(2)

(3).....

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5).....

31. Thus, the existence of a substantial question of law is a *sine qua non* for the exercise of jurisdiction under the provisions of Section 100 of the Code as laid down by the Hon'ble Supreme Court in ***“Union of India Vs.Ibrahim Uddin” (2012) 8 SCC 148.***

32. The appellants through the present appeal seek to urge the following as the proposed substantial question of law stated to be of general public importance:-

I. Whether the judgment of the learned Trial Court as well as the first Appellate Court is not contrary to the dicta laid down, by this Hon'ble Court as well as the Hon'ble Supreme Court of India with regard to the meaning, scope and interpretation of an "Admission" under Order XII Rule 6 of the Code of Civil Procedure, 1908, and particularly the judgement of the Hon'ble Supreme Court of India in Karam Kapahi Vs. Lai Chand Public Charitable Trust AIR 2010 SC 2077 = (2010) 4 SCC 753?

II. Whether a judgment against one of the contesting parties, when rejected in an appeal, could despite the Doctrine of Merger, still operate as an "Admission" under Order XII Rule 6 of the Code of Civil Procedure, 1908 against such contesting parties and continue to bind them?

III. Whether a purported "Admission" under Order XII Rule 6 of the Code of Civil Procedure, 1908, when such an "admission" has to be extracted on the basis of a detailed reading, interpretation and construction of a judgment which too, has subsequently been annulled in appeal?

IV. Whether an "admission" has to be clear, unequivocal and cannot be based on a detailed process of reasoning and culling out the Ratio Decidendi of a judgment?

V. Whether a Suit for permanent and mandatory injunction could be maintained for seeking the eviction of a purported licensee or for seeking the recovery of possession of the purported licensed premises when there is a serious cloud over the title of the alleged licensor - Plaintiff?

VI. Whether if the title of the purported "licensor" to the Suit premises is disputed by the licensee when, they are in a direct blood relationship with each other, could the Suit be dismissed without framing any issue regarding the title of the Defendants -Appellants when the Suit premises has been inherited by both from the common ancestor?

VII. Whether a Suit contested on the basis of the Defendant's title to the immovable properties could have been dismissed on an admission alleged on the basis of an annulled judgment while ignoring that the title in the immovable properties involved complicated questions of fact and law?

VIII. Whether a judgment could still hold its ground when that judgment has been annulled in appeal with liberty to the Appellants to re-agitate all questions of fact and law in the subsequently instituted Suits?

IX. Whether a Suit dismissed for want of cause of action under Order VII Rule 11 of the Code of Civil Procedure, 1908 could operate as Res Judicata qua the defence taken by the Plaintiff- Appellant, in the subsequent Suit?

X. Whether the dismissal of a Suit at the threshold without issue of notice to the Defendant; without as much as framing of issues; without taking evidence and without affording an opportunity to the Plaintiff to prove his case by evidence, could still be considered as an admission on the part of the Plaintiffs -Appellants?

XI. Whether when the judgment dismissing the Suit at the threshold as not disclosing any cause of action, having been successfully challenged in Appeal, could bar the Plaintiffs' defence in another Suit involving the adjudication of a part of the rights claimed in the first Suit?

33. The appellants contend that in view of the judgment in RFA(OS)50/17 the effect of the judgment in order dated 28.10.2015 in the *inter partes* suit being CS(OS)2711/15 had been completely invalidated and nullified and that the order dated 28.10.2015 in RFA(OS)50/17 could not have come in the way of the appellants appeal being allowed by the First Appellate Court which had failed to appreciate that there was no direct or indirect admission on the part of the appellants qua any of the aspects in the suit filed by the plaintiff i.e. the respondent.

34. The appellants also seek to contend that the First Appellate Court had chosen to ignore the observations in the order dated 20.12.2017 of the Hon'ble Division Bench of this Court in RFA(OS)50/17 in the last paragraph thereof which reads to the effect:-

“Needless to state that, we observe that the subject suit came to be dismissed at the threshold without the Hon'ble Court having struck issues and permitted the plaintiff to lead evidence.”

and it was thus submitted on behalf of the appellants that the averments in the written statement that they had filed in the suit before the learned Trial Court could not have been taken as any admission on the part of the appellants.

35. *Inter alia* the appellants contended that the First Appellate Court had failed to consider the defence of the appellants to the suit that all assets and properties had been purchased in the name of the respondent by late Sh. Duli Chand father of the appellant no.1 for the benefit of his wife and minor children and that the transfer of property between the spouses for inadequate consideration remains outside the purview of the **Benami Transaction (Prohibition) Act, 1988** and also in terms of **Section 2(9)(A) exception 3 of The Prohibition of Benami Property Transactions Act, 1988** and thus the respondent could not claim to be the absolute owner of the suit property by virtue of being the benami owner thereof on behalf of her husband and that the properties had only been entrusted by late Sh. Duli Chand to the respondent in trust for the benefit of his minor children and thus, the purchase of the property in suit in the name of the respondent could

not be held to be a benami transaction nor could the respondent claim an absolute interest in suit properties.

36. The appellants also contended that when the title of the purported licensor was being disputed by the purported licensee, the suit could not have been dismissed without first framing the issues in dispute. The appellants also submitted *inter alia* that the First Appellate Court erred in affirming the judgment of the Trial Court for recovery of Rs.25,000/- per month w.e.f. 20.01.2005 from the appellants till the suit property was vacated for the mesne profits/rental charges of use by the appellants to the respondent without calling for any evidence of the market rentals of similar property in the very same area.

37. Written submissions were submitted on behalf of the respondent whereby the respondents submitted that there was no infirmity in the judgment of the learned Trial Court nor of the First Appellate Court whilst placing reliance on the verdict of the Hon'ble Supreme Court in ***“Raveesh Chand Jain Vs. Raj Rani Jain”***(supra) contending that the passing of the judgment on the basis of an admission under Order XII Rule 6 of the CPC on the basis of an order passed in an earlier suit has already been upheld and the liberty granted vide the order in the RFA(OS)50/17, was only to agitate the legal submissions that may be available to the appellant no.1 herein which however could not be read to mean as if the order dated 28.10.2015 in CS(OS)2711/15 had been set aside and the liberty granted was only with respect to suits that the appellant no.1 would file with respect to property mentioned in Para

13 of the said judgment dated 28.10.2015 and not qua the property in suit.

38. Reliance was also *inter alia* placed on behalf of the respondents on the verdict of this Court in “**Ramesh Kumar Handoo Vs. Binay Kumar Basu**” in RSA286/2007 decided on 19.11.2007 to contend that a suit for mandatory injunction against a licensee is maintainable after the license is revoked.

39. As regards the contention raised on behalf of the appellants in relation to the non- applicability of the concept of the benami transaction to the property in question on the basis of the provisions of **Section 2(9)(A) exception (iii)** of the Prohibition of Benami Property Transactions Act, 1988, it is essential to advert to the said provisions which read to the effect:-

“2. Definitions.-*In this Act, unless the context otherwise requires,--*

.....

.....

(8) “*benami property*” means any property which is the subject matter of a benami transaction and also includes the proceeds from such property;

(9) “*benami transaction*” means,--

(A) *a transaction or an arrangement—*

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

except when the property is held by—

(i)

(ii)

(iii) ***any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;***

(iv)

.....

..... ” ,

qua which Section 2(9)(A) exception (iii) of the Benami Transactions (Prohibition) Amendment Act, 2016 and the Prohibition of Benami Transactions Act, 1988 in force w.e.f. 25.10.2016 is identical qua which it is essential to observe that the contentions, if any, in relation thereto can only be between the individual who has provided or paid for the purchase of any property as consideration in the name of his spouse or in the name of any child of such individual and can certainly not relate back to any joint properties or an HUF property or any trust property which in the instant case, vide order dated 28.10.2015 in CS(OS)2711/2015 qua the property in question has already been held to be not applicable. Significantly, reliance placed on behalf of the appellants on the verdict of this Court in ***“Manoj Arora Vs. Mamta Arora”***in RFA 522/2017, ***“Nand Kishore Vs. Sushila Mehra”***⁸⁰ (1999) DLT 670, and of the Hon’ble Supreme Court in ***“Jai Dayal***

Poddar Vs. MST. B.P. Hazra & Oth. 1974 (1) SCC 3, is thus misplaced as the three cases referred to hereinabove were between the spouses. As regards reliance placed on behalf of the appellants on the verdict of the Hon'ble Supreme Court in ***"Jai Dayal Poddar Vs. MST. B.P. Hazra & Oth. 1974 (1) SCC 3***, it is essential to observe that the suit for declaration has already been filed by the appellant *inter alia* in relation to the suit property, though, it cannot be overlooked that there is not a whisper of a mention of any *benami transaction* in the same, though vide Para 2(x) of the said suit now bearing no. CS No.667/17 pending in the Court of the learned ADJ, North West District, states as follows:-

"2(x) The intention of the Plaintiff's father ever since, he was diagnosed with the critical ailments had been to make all efforts to secure his family financially. Although he purchased the immovable properties in the name of the Defendant No.1, but it was always his intention that all the Defendants under the guardianship and care of the Defendant No.1, would enjoy these properties. As the Plaintiff and his other siblings were minors and below the age of contracting, the Plaintiff's father had to purchase the properties in the name of the Defendant No.1, as the custodian for the Plaintiff and the other Defendants. The purchase of these properties at the time of the respective purchase was embodied with attributes of care, trust and guardianship of the Defendant No.1 for the mutual benefit, safety, security and enjoyments of the entire family comprising of the Plaintiff and the Defendants."

40. It is also essential to observe that the appellant no .1 has filed the said suit CS No.667/17 in the Court of the District Judge, Rohini

(NW), Delhi seeking a declaration, partition, permanent and mandatory injunction and rendition of accounts and consequential reliefs inter alia in relation to the suit property.

41. Written submissions were submitted on behalf of the appellants submitting to the effect inter alia that if the impugned judgments of the First Appellate Court and the Trial Court were upheld, then the pending suit for declaration, partition, permanent and mandatory injunction and rendition of accounts and consequential reliefs i.e. CS No.667/17 filed by the appellant would also become *fait accompli* because in all proceedings wherein the appellant no.1 would assert his right to the joint family properties, the plea of alleged admission under Order XII Rule 6 of the CPC would be raised by the respondent by misreading, misinterpreting and misconstruing the judgment dated 28.10.2015 of the learned Single Judge as well as the judgment and order dated 20.12.2017 of the Hon'ble Division Bench of this Court.

42. On behalf of the appellants, a catena of verdicts has been relied upon in support of the contentions raised by the appellants in:

“Biswanath Aggarwala Vs. Savitri Bera and Ors.”(2009) 15 SCC 693;

“Alka Gupta Vs. Narendra Gupta” AIR 2011 SC 9;

“Kalyan Singh Chauhan Vs. C.P. Joshi” (2011) 11 SCC 786;

“Pratima Sinha and Ors. Vs. Ashish Kumar Sinha and Ors. (2004) 13 SCC 599;

“Adivappa & Ors. Vs. Bhimappa & Anr.”AIR 2017 SC 4465;

“Nand Kishore Vs. Sushila Mehra”1995 AR 2145, 1995 SCC (4) 572;“Cosmo Ferrites Limited Vs. M/s Universal Commercial Corporation &Ors” AIR 2006 DELHI 320;

“Parivar Seva Sansthan Versus Dr. (Mrs.) Veena Kalra & Othres”AIR 2000 DELHI 349;

“Dudh Nath Pandey Versus Suresh Chandra Bhattasali”AIR 1986 SC 1509;

“Raveesh Chand Jain Vs. Raj Rani Jain”(2015) 8 SCC 428;

“M/s Jeevan Diesels & Electricals Limited Vs. M/s Jasbir Singh Chaddha (HUF) &Anr.” AIR 2010 SC 1890;

“Mrs. Vijay Gupta &Ors. Vs. Ashok Kumar Gupta” AIR 2007 Delhi 166.

43. The appellants further contend that the respondent ought to have filed a suit for eviction or possession against the appellants and not mere a suit for mandatory injunction. It was also submitted on behalf of the appellants that all the parties in CS(OS)2711/2015 were not parties to the suit in appeal except the appellant no.1 and the respondent herein and the appellant no.2 was not a party in CS(OS)2711/2015 and the judgment dated 28.10.2015 would not bind her i.e. the appellant no.2 up. The appellants thus, submit that if the impugned judgment of the First Appellate Court and the Trial Court were upheld, the appellant no.1 would never be able to receive his due share in the property of his late father in the suit CS No.667/17 filed by the appellant no.1.

44. It is essential to observe that vide the order dated 20.12.2017 in RFA(OS)50/17, the judgment dated 28.10.2015 in CS(OS)2711/2015 has not been set aside. As already observed elsewhere hereinabove, the said suit CS(OS)2711/2015 seeking partition and possession inter alia in relation to the property as mentioned at serial no.6 of paragraph 5 of the judgment dated 28.10.2015 has been dismissed.

45. The contention that has been raised on behalf of the appellants that the appellant no.2 was not a party to the *lis* in CS(OS)2711/2015 is devoid of all merits as the appellant no.2 is the wife of the appellant

no.1 and can derive a locus in relation to the suit property only as the wife of the appellant no.1.

46. As regards the contention sought to be raised on behalf of the appellants that the judgment of the learned Trial Court and the First Appellate Court is contrary to the dictum of the verdict of the Hon'ble Supreme in ***"Karam Kapahi and Ors. Vs. Lal Chand Public Charitable Trust and Ors."*** AIR 2010 SC 2077 and that the admission, if any, has only been extracted on the basis of a detailed reading, interpretation and construction of the judgment in CS(OS)2711/15 qua which vide RFA(OS)50/17 liberty was granted to the appellant no.1 to file a separate suit which has already been so filed by the appellant no.1, and that the admission had to be clear, unequivocal and cannot be based on the detailed process of reasoning in culling out the ratio *decidendi* of a judgment, it is essential to observe that order XII Rule 6 of the CPC provides as follows:-

"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.

(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."

47. As laid down by the Hon'ble Supreme Court in ***"Karam Kapahi and Ors. Vs. Lal Chand Public Charitable Trust and Ors."*** (supra) vide Para Nos. 48, 49, 50, 51, 52 & 53 which read to the effect:-

“48. In the 54th Law Commission Report, an amendment was suggested to enable the Court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering judges to use it 'ex debitojustitiae', a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment.

49. If the provision of order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider in as much as the provision of order 12 Rule 1 is limited to admission by 'pleading or otherwise in writing' but in Order 12 Rule 6 the expression 'or otherwise' is much wider in view of the words used therein namely: 'admission of fact...either in the pleading or otherwise, whether orally or in writing'.

50. Keeping the width of this provision in mind this Court held that under this rule admissions can be inferred from facts and circumstances of the case [See Charanjit Lal Mehra and Ors. v. Kamal Saroj Mahajan (Smt.) and Anr. MANU/SC/0191/2005: (2005) 11 SCC 279 at page 285 (para 8)]. Admissions in answer to interrogatories are also covered under this Rule [See Mulla's commentary on the Code, 16th Edition, Volume II, page 2177].

51. In the case of Uttam Singh Duggal & Co. Ltd. v. United Bank of India and Ors. MANU/SC/0485/2000 : (2000) 7 SCC 120, this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment.

52. In that case it was contended on behalf of the appellant, Uttam Singh Duggal, that:

(a) Admissions under Order 12 Rule 6 should only be those which are made in the pleadings.

(b) The admissions would in any case have to be read along with the first proviso to Order 8 Rule 5(1) of the Code and the Court may call upon the party relying on such admission to prove its case independently.

(c) The expression 'either in pleadings or otherwise' should be interpreted ejusdem generis. [See para 11, pages 126-127. of the report]

53. Almost similar contentions have been raised on behalf of the Club. In Uttam Singh (supra) those contentions were rejected and this Court opined no effort should be made to narrow down the ambit of Order 12 Rule 6."

and thus, the reliance placed vide the impugned judgments on the verdict "***Raveesh Chand Jain Vs. Raj Rani Jain***" (*supra*) wherein it was observed vide Para 11, 12, 13, 14, 15, 16, 17, 18 & 19 to the effect:-

"11. The provision of Order XII Rule 6 has been discussed by this Court in the case of Karam Kapahi and Ors. v. Lal Chand Public Charitable Trust and Anr. MANU/SC/0240/2010 : (2010) 4 SCC 753, wherein this Court observed:

39. In the 54th Law Commission Report, an amendment was suggested to enable the court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Judges to use it "ex debito justitiae", a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment.

40. If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the

provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by "pleading or otherwise in writing" but in Order 12 Rule 6 the expression "or otherwise" is much wider in view of the words used therein, namely: "admission of fact... either in the pleading or otherwise, whether orally or in writing".

41. Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see Charanjit Lal Mehra v. Kamal Saroj Mahajan, SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see Mulla's Commentary on the Code, 16th Edn., Vol. II, p. 2177).

42. In Uttam Singh Duggal and Co. Ltd. v. United Bank of India this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment.

12. Coming back to the instant case there is no dispute that the Plaintiff/Respondent filed the suit for possession of the suit property and also for recovery of Rs. 5,55,000/- and future damages at the rate of Rs. 15,000/- per month. The Plaintiff/Respondent claimed title in the suit property and averred that the Appellant is in unauthorized occupation of the suit property without any authority or justification. In the plaint it was specifically pleaded that the ownership right in the suit property has already been decided in favour of the Respondent and against the Appellant by judgment and decree dated 8.9.2003 and the appeal filed by the Appellant was also dismissed

vide judgment dated 12.9.2011. Hence, the Appellant is in illegal possession of the suit property.

13. On an application filed by the Plaintiff/Respondent Under Order XII Rule 6 Code of Civil Procedure seeking a judgment in the suit, the trial court dismissed the application stating that there is no unequivocal admission for passing a judgment in the suit. The High Court, however, reversed the order passed by the trial court and held that considering the earlier judgment deciding the ownership of the suit property in favour of the Appellant, the suit for possession ought to have been decreed by the trial court. Consequently, the High Court decreed the suit. Paras 6 and 7 of the impugned judgment passed by the High Court are quoted hereinbelow:

6. The only new aspect urged in the present written statement is that the Respondent/Defendant claimed that he received ownership share in the suit property by virtue of a written compromise entered into before the police station Anand Vihar on 22.10.1997, however, it is noted that the earlier suit, which was a suit for partition filed by the Respondent/Defendant, the issue as regards the claim of the Respondent/Defendant to the ownership rights in the suit property was very much in issue, and hence the Respondent/Defendant had to urge in the earlier proceedings all the basis of his claims of ownership rights in the suit property and if that was not done the Respondent/Defendant is now barred by the principle of constructive res judicata from raising any claims which ought to have been urged in the earlier proceedings. The principle with respect to doctrine of res

judicata is that there must be finality achieved to litigation and parties must not be harassed over and over again merely by changing certain facts with respect to the main relief claimed viz., of ownership rights in the suit property.

7. In view of the above, the impugned order dated 7.6.2013 is completely illegal and the issues in the present case stand covered against the Respondent/Defendant by the principle of res judicata enshrined in Section 11 Code of Civil Procedure. So far as the relief of possession is concerned, suit of the Plaintiff/Petitioner/mother will hence stand decreed against the Respondent/Defendant for the portion so in possession of the Respondent/Defendant as per the site plan filed. Since the Respondent/Defendant/son is harassing the mother from 1998 and today we are in the year 2014, this appeal is allowed with actual cost. Petitioner/Plaintiff will file an affidavit in this Court supported by certificate of fees of her counsels in this appeal with respect to the fees paid to the counsels, and such fees paid will be the cost which will be payable by the Respondent/Defendant to the Petitioner/Plaintiff. The aforesaid affidavit accompanied by the certificate of the fees of the counsels be filed by the Petitioner within a period of four weeks and costs be paid thereafter within a period of four weeks.

14. From the reading of para 7 of the order, as quoted hereinabove, it reveals that the High Court not only decreed the suit for possession but also directed the Plaintiff/Respondent to file an affidavit

giving details of the cost of litigation since the appeal was allowed with cost.

15. As discussed hereinabove, there is no dispute with regard to the law settled by this Court that Order XII Rule 6 confers wide discretion on the Court to pass judgment either at the stage of the suit on the basis of admission of the facts made in the pleadings or otherwise, but the Court shall later on decide the other questions which arise for consideration in the Suit.

16. It is equally well settled that the provision of Order XII Rule 6 of the Code is not a mandatory provision rather discretionary. While exercising power of passing judgment on admission made in the pleading or otherwise, the Court must keep the matter pending for adjudication so far as other issues are concerned.

17. Indisputably, the Plaintiff/Respondent filed the suit for following relief:

- i) A decree for possession of the suit property;*
- ii) A decree for recovery of Rs. 5,55,000/- and future damages @ Rs. 15,000/- per month against the Defendant.*

18. So far as the first relief for a decree for possession is concerned, we are in full agreement with the view taken by the High Court having regard to the question of ownership already decided in the earlier suit filed by the Defendant/Appellant. The said issue need not have to be decided afresh and hence on the basis of the finding of ownership decided in favour of the Plaintiff/Respondent, the suit has to be decreed so far as the recovery of possession is concerned.

19. So far as the second question with regard to the entitlement of the Plaintiff/Respondent to claim a decree for recovery of a sum of Rs. 5,55,000/- and future damages @ Rs. 15,000/- per month is concerned, admittedly this question has not been decided either in the earlier suit or in this suit. In that view of the matter, decreeing the entire suit on the basis of ownership of the Plaintiff/Respondent already decided in the earlier suit, the decree for recovery of damages ought not to have been passed by the High Court.”

48. It is apparent that the scope of admission in term of Order XII Rule 6 of the CPC would include the admission through finality attached to a judgment as in CS(OS)2711/15 disposed of vide order dated 28.10.2015 specifically in relation to the property in suit as the said judgment dated 28.10.2015 has not been set aside in RFA (OS) 50/2017 though liberty has been granted to the Appellant No.1 to initiate proceedings as per law.

49. As regards thus, the proposed substantial question of law as urged as issues nos. 1, 2, 3 & 4 do not arise at all in the facts and circumstances of the instant case.

50. As regards the proposed issue no.5 also in view of the verdict of this Court in “**Ramesh Kumar Handoo Vs. Binay Kumar Basu**” (supra), the suit filed by the plaintiff i.e. the respondent before the learned Trial Court was apparently maintainable.

51. Proposed issue no.6 equally in view of the averments made in the plaint itself and also non-applicability of Section 2(9)(A) exception 3 to the property in suit, the proposed issue no.6 also does not arise in the facts and circumstances of the instant case.

52. The proposed issue nos.7 & 8 also do not arise in the facts and circumstances of the instant case inasmuch as vide the verdict dated 20.12.2017 in RFA(OS)50/17, the judgment impugned therein dated 28.10.2015 has not been set aside and only liberty was granted to the appellant no.1 herein to withdraw the appeal RFA(OS)50/17 to agitate all legal submissions as may be available to him in other proceedings in accordance with law in relation to which the appellant no.1 has already filed the suit CS No.667/17 seeking the reliefs. The proposed issue nos. 7 & 8 are also thus, do not arise for consideration in the facts and circumstances of the instant case.

53. As regards the proposed issue no.9, it is needless to observe that the pleadings of the parties in the instant case suffice to bring forth the applicability of Order XII Rule 6 of the CPC in the manner that it has been invoked by the learned Trial Court and thus, in the facts and circumstances of the instant case, the proposition sought to be urged through proposed issue no.9 thus, does not arise for consideration.

54. To similar effect are the observations qua proposed issue no.10 and 11 in view of the pleadings of the suit on the record as placed by either side.

55. Even, as regards the contention, in relation to the rate of mesne profits being computed at the rate of Rs.25,000/- per month, in the absence of any specific denial qua the license charges that can be recovered for the property in question from any person be at the rate of Rs.25,000/- per month, having not been specifically refuted by the appellants, it is apparent that there is no substantial question of law that arises in the facts and circumstances of the instant case.

56. The present appeal and the accompanying application CM No. 2714/2019 are declined.

ANU MALHOTRA, J.

FEBRUARY 07, 2019/SV/NC

