

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA No. 23/2019 and CM No.4782/2019**

Judgment reserved on : 28.02.2019

Date of decision : 21.07.2020

JAGRITI@GAYATRI Petitioner
Through: Mr.Virendra Singh, Advocate
versus

VIKAS SHARMA & ORS. Respondents
Through: Mr.Rajiv Kumar Tomar,
Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The present Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, by the appellant assails the judgment and decree of mandatory and permanent injunction dated 05.03.2018 in Suit No.171/2015 granted by the Ld.Trial Court of the ASCJ (East), Karkardooma Courts, Delhi in relation to the claim of the plaintiff Nos.1, 2 and 3 of that suit viz. Vikas Sharma, Sarla Sharma and Rajender Prasad Sharma under Order XII Rule 6 of the CPC and which was upheld by the Ld. ADJ-03 in the first appeal i.e. RCA DJ No.52/18, which judgment dated 22.10.2018 in the first appeal is assailed as well.

2. Notice of the appeal and the accompanying application CM No.4782/2019 seeking the stay of the execution of the decree under Order XII Rule of the CPC dated 05.03.2018 was directed to be issued

vide order dated 01.02.2019 to the respondents herein, who put in appearance through learned counsel and vide order dated 08.02.2019 both the Trial Court record and the record of the Appellate Court were requisitioned which have since been received and perused.

3. Submissions were made on behalf of either side and written submissions were also filed on behalf of respondents Nos.1, 2 and 3 i.e. Vikas Sharma S/o Rajendra Prasad Sharma, Sarla Sharma W/o Rajendra Prasad Sharma and Rajendra Prasad Sharma.

4. Vide order dated 08.02.2019, the operation of the impugned order was stayed pending determination of the aspect of the formulation of the essential question of law, if any, in the present appeal.

5. The averments made in the suit filed by the respondent Nos.1, 2 and 3 herein before the Trial Court through the suit of permanent and mandatory injunction and damages were to the effect that the plaintiff No.1 i.e. respondent no.1 herein Shri Vikas Sharma is the owner of property no.51/1A, Street No.13, East Azad Nagar, New Delhi-110051 comprising of one room, kitchen and bathroom on the second floor and one room, open space along with bathroom on third floor and that the said plaintiff no.1 i.e. respondent no.1 herein had purchased the said property from Smt. Santosh Kumari W/o Shri Ashok Kumar vide a sale deed was executed and registered in his favour on 28.09.2001 in the office of the Sub Registrar-VIII in the East district.

6. The plaintiffs of the suit as respondents herein had asserted in the plaint that the plaintiff no.1 had constructed the second floor and third floor in the said property and had already disposed off the ground floor and first floor of the said property and that the plaintiff no.1, his wife and plaintiff No.2 & 3 used to reside at the second floor and third floor of the property bearing no. 51/1A, Street No.13, East Azad Nagar, Delhi 110051 of which the electricity meter and connection is installed in the name of the plaintiff no.1 i.e. respondent no.1 herein and that the gas connection was also issued in the name of the plaintiff nos.1 and 2 i.e. respondent nos.1 and 2 herein. The plaintiffs i.e. the respondents herein had also submitted in the suit that the landline telephone connection from MTNL was also installed, in the name of the plaintiff no.2 and that the Aadhar Card of the plaintiff no.2 and his wife bore the address of the suit property and that even after marriage, the plaintiff no.1 i.e. respondent no.1 and his wife resided together at the address of the suit property.

7. It was averred in the said suit that the defendant no.1 i.e. the appellant herein is the daughter in law of the plaintiff no.2 arrayed as respondent no.2 herein and that the husband of the appellant was the elder brother of the plaintiff no.1 i.e. respondent no.1 herein had been permitted to stay in one room, kitchen, bathroom on the second floor of the property bearing no. 51/1A, Street No.13, East Azad Nagar, Delhi 110051 in the year 2011 as a licensee and had allowed him to use the goods of plaintiff no.1 i.e. respondent no.1 lying in the second floor on account of the close relations in the portion of the suit

property as shown in the red colour in the site plan annexed with the plaint and that the plaintiff of the said suit and his family had shifted to the third floor of the premises.

8. It was also averred in the suit that the overall control over the said premises was of the plaintiff no.1 i.e. respondent no.1 herein and the defendant i.e. the appellant herein had only a permissive right to use the said premises as a licensee and had no legal right in the said premises.

9. The spouse of the appellant herein i.e. the brother of the respondent no.1 herein and son of respondent nos.2 and 3 expired on 13.12.2014 as submitted through the plaint and it was submitted by the plaintiffs i.e. the respondents herein that the plaintiff no.1 and his wife had taken good care of his brother and put every effort in his treatment.

10. The plaintiffs i.e. the respondents averred further in their suit that the appellant herein along with others had hatched a conspiracy against the plaintiffs i.e. respondents and in furtherance of the common object and scheme, the defendant i.e. the appellant herein was trying to grab the property of the plaintiff no.1 i.e. respondent no.1 herein wholly illegally. Inter alia the plaintiffs of that suit i.e. respondents herein asserted that the defendant i.e. the appellant herein in order to grab the suit property had filed a false and frivolous case against the plaintiff no.1, his wife i.e. plaintiff no.2 and 3 i.e.

respondent no.2 and 3 at the CAW Cell wherein the official of the CAW Cell had cleared the respondent no.1 and dismissed the complaint of the defendant i.e. appellant herein.

11. That the plaintiffs i.e. the respondents herein had further averred in the suit that the defendant / appellant herein had locked the door of the stair case at the second floor and had not allowed the plaintiffs to use the premises' bearing No .51/1A, Street. No .13, East Azad Nagar Delhi -110051, and had been threatening the plaintiffs if they would try to ingress in the property she would implicate them and her family members in false criminal cases.

12. It was further averred in plaint that the respondent no.1 herein had filed a complaint against the appellant i.e. defendant to that suit on 12.02.2015, 12.03.2015 and 23.05.2015 to SHO PS Krishna Nagar, Delhi-51. Inter alia it has been asserted through the plaint that the defendant i.e. the appellant herein and her mother were in the legal occupation of the suit property and that the plaintiff no.1 i.e. respondent no.1 herein had visited the suit property around 6 pm on 08.02.2014 and one person named Manoj was there and had threatened the plaintiffs with the dire consequences.

13. Inter alia it had been submitted through the plaint that the plaintiff no.3 i.e. respondent no.3 herein is a senior citizen suffering from various health ailments and was being treated by nearby doctors and on 23.05.2015, the plaintiff no.1 and 3 were going upstairs to the

third floor in the premises bearing no. 51/1A, Street No.13, East Azad Nagar, Delhi 110051 and were restrained by the defendant i.e. appellant herein and that the plaintiff no.1 had to call the police and in the presence of the police officials, they were allowed to go upstairs to the third floor and the plaintiff nos.1 and 3 i.e. respondent nos.1 and 3 herein found that the doors of the almirah's where the plaintiffs kept their jewelleryes and valuables had been broken open by the defendant i.e. appellant herein and thereafter the police was informed and the plaintiff nos.1 and 3 i.e. respondent nos.1 and 3 herein again locked the third floor in the presence of the police officials and obtained photographs. Inter alia, through the plaint, it was averred by the defendant i.e. appellant herein in order to implement her legal designs had also contacted local property dealers for the sale of the said property.

14. It was also asserted through the plaint that the defendant i.e. the appellant herein has been using the suit premises for commercial illegal purposes and the electricity meter installed in the name of the plaintiff no. 1 i.e. respondent no.1 herein was for domestic purpose. The plaintiffs i.e. respondents herein had submitted in their plaint that the defendant i.e. the appellant herein was illegally threatening to transfer and alienate and dispose off the property in question by creating third party interest in the same and despite the request of the respondents herein i.e. plaintiffs of the suit to refrain from doing so to accept the legitimate request of the plaintiff and further threatened that

nobody can stop them from creating third party interest over the said property.

15. It was also asserted through the plaint that the defendants do not wish to keep the defendant i.e. the appellant herein as a licensee anymore and therefore terminated her license by sending a legal notice through his counsel dated 18.04.2015 and the said legal notice was duly served on the defendant but, no reply was received from the defendant and the defendant became more aggressive against the plaintiff and had been threatening, and criminally intimidating the plaintiff with the dire consequences.

16. The plaintiffs to the suit thus submitted that the defendant i.e. appellant herein had no legal right to retain the possession of the suit property and was under an obligation to surrender the portion in her possession in view of the termination of a licence which was terminated on the demise of the spouse of the appellant on 13.12.2014 as also when a notice of demand dated 18.04.2015 was sent by the respondents herein to the defendant / appellant terminating the said licence.

17. The prayer thus made by the plaintiffs in their suit bearing initial no.171/15 and then CS No.8635/16 thus sought the grant of a decree of permanent and mandatory injunction in favour of the plaintiffs and against the defendant i.e. appellant herein thereby restraining their agents, employees, associates, workers, family members and the persons working on its behalf from transferring,

alienating and / or disposing off the property by sale or otherwise or creating any third party interest over the property bearing No. 51/1A, Street No.13, East Azad Nagar Delhi -110051, consisting of one room, Kitchen and bathroom on the second floor and one room, open space along with bathroom on third floor as more specifically shown and delineated in red colour in the site plan annexed with the plaint and/or from, parting with the possession in respect of the portion in their possession to any other person except the plaintiffs in any manner whatsoever. The Plaintiff of the said suit had also sought for the grant of a decree of mandatory and permanent injunction in favour of the plaintiffs i.e. respondents herein against the defendant i.e. the appellant herein seeking a direction to the defendant i.e. appellant herein to immediately vacate and surrender the actual, vacant peaceful physical possession of the premises in question comprising of one room, kitchen and washroom on the second floor and one room as shown in the site plan apart from seeking damages to the tune of Rs.15000/- per month from the date of receipt of the legal notice.

18. Through the written statement that has been submitted by the defendant i.e. the appellant before the Ld. Trial Court, it was contended that the suit was not maintainable as a suit for possession was not maintainable in the form of a mandatory injunction in as much as the plaintiffs i.e. respondents had never been in possession of the suit property and that the Trial Court did not have jurisdiction to try, entertain and decide the present suit which was valued beyond the pecuniary jurisdiction of the Trial Court being valued at Rs.20 lacs.

Inter alia the defendant as the appellant herein has submitted through the written statement that the suit was not maintainable and no decree could be passed, in as much as she was in exclusive possession of the suit property as the owner having been inherited the ownership rights from her deceased husband Shri Vipin Sharma and the plaintiffs i.e. respondents herein have no concern with the suit property and have never been in possession of any portion thereof.

19. Inter alia the defendant as appellant herein has submitted through the written statement that the suit was not maintainable as the plaintiff no.3 i.e. respondent no.3 i.e. the father in law of the defendant i.e. appellant herein and Late Shri Vipin Sharma had jointly purchased the suit property by joint funds but due to love and affection the documents of the property had been executed in the name of the plaintiff no.1 i.e. respondent no.1 herein being the younger brother as at that time an eviction petition under Section 14(1) of the DRC Act, 1958, was filed by Shri Rajendra Prasad Sharma i.e. Plaintiff No.3 i.e. Respondent No.3 herein and that Shri Rajendra Prasad Sharma did not wish to execute a title document in his name or in the name of the husband of the defendant i.e. the appellant herein and thus the documents of the property were executed in the name of the plaintiff no.1 i.e. respondent no.1 to avoid any further dispute in the matter in relation to the property.

20. The defendant i.e. the appellant had further contended through her written statement that the respondent no.3 and Late Shri Vipin

Sharma had become the owners of the suit property and after the death of Shri Vipin Sharma, the defendant i.e. appellant and her minor daughter Shreya had inherited the share of Vipin Sharma and during the lifetime of Vipin Sharma, the Plaintiff no.3 had orally partitioned the suit property wherein the ground floor and first floor of the property was given into the share of the Plaintiff No.1 i.e. respondent no.1 herein which had already been sold by him whereas the second and third floor was given to Vipin Sharma and he had become the owner of these floors and the defendant along with her deceased husband has been enjoying the possession of the suit property as owner without any hindrance from any corner and after him the defendant along with her minor daughter have inherited the ownership rights of these floors from Shri Vipin Sharma.

21. The defendant to the suit i.e. appellant herein thus submitted that the said suit was not maintainable as the plaintiffs i.e. respondents herein have been guilty of concealing the true and material facts and misrepresenting the facts before the Court in as much as the respondents herein had never been in possession of any part of the suit property and had given the wrong address in the memo of parties in as much as the plaintiffs i.e. the respondents herein are residents of Vaishali, Ghaziabad and they were liable for perjury by giving wrong information to the Court.

22. Inter alia the defendant i.e. the appellant herein has submitted through the written statement that the suit filed by the plaintiffs i.e. the

respondents herein was a counterblast of the suit filed by her in the month March, 2015 and that the suit in question was filed by the defendant subsequently after service of the said case filed by the defendant i.e. appellant herein.

23. Inter alia the defendant i.e. the appellant herein has submitted that the title of the plaintiff was in dispute and there was a cloud on his title and that the respondent no.1 herein had not sought the relief of declaration in relation to ownership of the property and without seeking the relief of the declaration the suit for permanent and mandatory injunction was not maintainable and was liable to be dismissed.

24. Inter alia, the defendant i.e. the appellant herein through her written statement had submitted that the suit filed by the plaintiffs was liable to be dismissed in as much as the sale deed in favour of Vikas Sharma was a forged document and had never been executed by the original owner in relation the property in dispute and that the defendant i.e. the appellant herein had learnt of the sale deed only on receipt of the summons of the said suit and reserved her right to challenge the same by filing appropriate proceedings.

25. The defendant i.e. the appellant herein denied that the plaintiff no.1 i.e. respondent no.1 herein had ever been in control or possession of the suit property or the defendant i.e. appellant is the licensee in the suit property or had no legal right in the suit property. Inter alia the defendant i.e. appellant herein denied that the plaintiff no.1 i.e.

respondent no.1 herein was entitled to any damages whatsoever and denied that there was any cause of action in favour of the plaintiffs i.e. respondents herein in as much as she reiterated that the plaintiff i.e. the respondents had no right, title or interest in the suit property.

26. Vide an application under Order XII Rule 6 of the CPC, 1908 dated 06.11.2017 filed by the plaintiff no.1 i.e. respondent no.1 herein vide which the plaintiff no.1 i.e. respondent no.1 herein sought the grant of a decree of mandatory and permanent injunction in favour of the plaintiff no.1 i.e. respondent no.1 herein on the basis of admissions made by the defendant i.e. appellant herein in the written statements and the documents placed on record filed with it having been further submitted through the application that as far as the payment of the mesne profits was concerned appropriate orders in relation thereto may be passed.

27. It was submitted through this application under Order XII Rule 6 of the CPC, 1908 filed by the Plaintiff No.1 that it was the admitted case of the parties that the plaintiff no.1 is the owner of the suit property in question by virtue of the sale deed registered in the office of Sub Registrar-VIII, East Delhi, and that the defendant i.e. appellant herein is the widow of the elder brother of the plaintiff no.1 i.e. respondent no.1 herein and that the plaintiff no.1 i.e. respondent no.1 herein had allowed the elder brother of the plaintiff no.1 to use the suit property as a licensee and had requested the defendant i.e. the appellant to vacate the suit premises after the demise of his brother on

13.12.2014. Inter alia the plaintiff no.1 i.e. the respondent no.1 herein had submitted through the application that the defendant i.e. the appellant herein vide the reply in para 5 of the preliminary objections of the plaint has stated that the documents of the property were got executed in the name of the plaintiff no.1 just to avoid any further dispute in the instant matter with regard to the aforesaid property and that the defendant i.e. appellant herein had thus not denied the existence of the sale deed and had not put forth any claim independently in respect of the suit property nor had she filed any proceedings challenging the title of the plaintiff no.1 i.e. respondent no.1 herein in relation to the suit property and that in as much as the rights of the appellant were only from the rights of her late spouse whose license terminated on his demise and further stood terminated with the cancellation of the licence for use and occupation of the premises in question by the appellant herein on termination of the said licence by the respondents to the present proceedings.

28. The plaintiffs i.e. the respondents herein further averred that vide a legal notice served on the appellant herein, the respondents herein had given ample opportunity to apprise the defendant i.e. appellant herein of the termination of the licence in the said premises. It had thus been submitted by the respondent no.1 herein that in view of the admission made by the defendant i.e. appellant herein there was no necessity for waiting for determination of any other question between the parties and that the plaintiffs i.e. respondents herein are

entitled to the grant of the decree on the basis of admissions made by the defendant.

29. The appellant herein vide her reply to the application under Order XII Rule 6 of the CPC, 1908 submitted before the Ld. Trial Court whilst reiterating the averments made in the written statements that the matter was at the stage of plaintiffs' evidence much of which had already been dealt with and that the plaintiffs had not discharged the burden of proof as per law.

30. The impugned judgment dated 05.03.2018 of the Ld. ASCJ (East Delhi), Karkardooma Court reads to the effect:

“1. The case is listed for Order an tile application filed by tile plaintiffs under Order XII Rule 6 of CPC, 1908, on 06.11.2017. By way of the said application, the plaintiffs have sought judgment/decreed qua the reliefs of mandatory injunction and permanent prohibitory injunction, sought by way of this suit. The arguments qua the merit of the said application were heard on 16.01.2018.

2. During the hearing of arguments on 16.01.2018, the Ld. Advocate for the plaintiffs had submitted that this Court should grant the judgment/decreed qua the reliefs of mandatory injunction and permanent prohibitory injunction, sought by way of this suit, by exercising power under Order XII Rule 6 of

CPC, 1908, because (a) the plea of the defendant that the plaintiffs cannot file a suit for mandatory injunction against the defendant and. instead, the plaintiffs should file a suit for possession against the defendant, is untenable in law, on account of the law laid down in Sant Lal Jain Vs Avtar Singh, (1985) 2 SCC 332 and Joseph Severance & Ors. V Benny Matthew & Ors. (2005) 7 SCC 667 and because (b) the plea of the defendant that she has inherited ownership rights in property no.51/1A, Street No.13, East Azad Nagar, Delhi (henceforth 'suit property') upon the death of her husband, Late Sh. Vipin Kumar Sharma, is untenable in law, on account of the existence of the unchallenged registered Sale deed dated 28.09.2001, in the name of the' plaintiff no.1. Per contra, the Ld, Advocate for the defendant had submitted that this Court should not grant the judgment/decreed qua the reliefs of mandatory injunction and permanent prohibitory injunction sought by the plaintiffs, by exercising power under Order XII Rule 6 of CPC 1908, because (a) in the written statement, the defendant has nowhere admitted the case of the plaintiffs, because (b) the defendant has inherited ownership rights in the suit property upon the death of her husband, Late. Sh. Vipin Kumar Sharma, as the suit property was purchased from the funds of Late Sh. Vipin Kumar Sharma and because (c) after framing of issues on 12.10.2015, it would be inapposite for this Court to exercise the power under Order XII Rule 6 of CPC, 1908, in respect of the

reliefs of mandatory injunction and permanent prohibitory injunction, sought by way of this suit.

3. *After considering the submissions made by the ld. Advocates for the parties on 16.01.2018 and perusing the record of the Court file, I find that de hors the fact that the issues of this suit were framed by a Ld. Predecessor Judge on 12.10.2015, this Court can pass the judgment / decree qua the reliefs of mandatory injunction, and permanent prohibitory injunction, sought by way of this suit, by exercising power under Order XII Rule 6 read with Order XV Rule 1 of CPC, 1908 because (a) all the defences pleaded by the defendant in the written statement and all the submissions made by the Ld. Advocate for the defendant qua the said reliefs, are untenable in law and do not require adjudication by way of trial and because (b) the judgments of the Hon'ble High Court of Delhi in Shiv Kumar v Sumit Gulati, (2015) 225 DL T 591 and Bhupender Jit Singh Vs Sonu Kumar, C.R.P. 176/2017 decided by the Hon'ble High Court of Delhi on 12.10.2017, 2017 SCC Online Del 11106-1.mandate this Court to exercise power, under Order XII Rule 6 read with Order XV Rule 1 of CPC,. 1908 when, inter se the parties, there is no 'material' issue, requiring adjudication by way of trial.*

4. *In my view, the defence of the defendant that in the garb of mandatory injunction, the plaintiffs are seeking the relief of*

possession qua the second and third floor of the suit property and consequently, the plaintiffs have improperly valued the plaint of this suit for the purpose of court fees and jurisdiction, is untenable in law, on account of the law laid down in Sant Lal Jain v Avtar Singh, (1985) 2 SCC 332 and Joseph Severance & Ors. v Benny Mathew & Ors. (2005) 7 SCC 667 as well as the law laid down in Section 7(iv)(d) of the Court-fees Act, 1870 and Section 8 of Suits Valuation Act, 1887. In Sant Lal Jain v Avtar Singh, (1985) 2 SCC 332 and Joseph Severance & Ors. v Benny Mathew & Ors. (2005) 7 see 667, the Hon'ble Supreme Court has held that in case of licensor-licensee(s) relationship, the licensor can file a suit for mandatory injunction against the licensee(s), seeking a direction to the effect that the licensee(s) be directed to vacate the licensed premises, provided the suit is filed by the licensor within reasonable time of terminating/revoking the license of the licensee(s). In Section 7(iv)(d) of the Court-fees Act, 1870, it is provided that a plaintiff can value a suit for injunction, as per his own discretion. In Section 8 of Suits Valuation Act, 1887, it is provided that the value of a suit for injunction has to remain the same for the purpose of court-fees and jurisdiction. Since, the law laid down in Sant Lal Jain Vs Avtar Singh, (1985) 2 SCC 332 and Joseph Severance & Ors. Benny Matthew & Ors. (2005) 7 SCC 667 as well as tile law laid down Section 7(iv) (d) of the Court -fees Act, 1870 and Section 8 of Suits Valuation Act, 1887, squarely applies to the facts and circumstances of the

present case, the defence of the defendant that in the garb of mandatory injunction, the plaintiffs are seeking the relief of possession qua the second and third floor of the suit property and consequently, the plaintiffs have improperly valued the plaint of this suit for the purpose of court-fees and Jurisdiction, is completely merit less and untenable in law.

5. *Further, in my view, the defence of the defendant that she is not a licensee qua the second and third floor of the suit property and that has inherited ownership rights in the suit property upon the death of her husband, Late Sh. Vipin Kumar Sharma, as the suit property was purchased from the funds of Late Sh. Vipin Kumar Sharma, is also untenable in law, on account of the existence of the unchallenged' registered sale deed dated 28.09.2001, in the name of the plaintiff no.1 and on account of the applicability of the law laid down in Bhupender Jit Singh v Sonu Kumar, C.R.P. 176/2017 decided by the Hon'ble High Court of Delhi on 12.10.2017, 2017 SCC Online Del 111061. In the said judgment, the Hon'ble High Court of Delhi, while dealing with similar facts and circumstances, has applied the law laid down in Gorakh Nath Dube v Hari Narayan Singh. (1973) 2 SCC 535 and allowed the application filed by the petitioner/plaintiff under Order XII Rule 6 of CPC, 1908 on the premise that till the respondent/defendant does not succeed in the challenge qua the registered sale deed of the*

petitioner/plaintiff, raised by filing a separate suit, the petitioner/plaintiff cannot be denied the relief of possession.

6. Since, all the defences pleaded by the defendant in the written statement and since all the submissions made by the Ld. Advocate for the defendant are untenable and do not require adjudication by way of trial, the reliefs of mandatory injunction and permanent prohibitory injunction, sought by way of this suit, are decreed in favour of the plaintiff no.1 and against the defendant. The defendant is hereby directed to vacate the second and third floor of property no.51/1A, Street No.13, East Azad Nagar, Delhi. Also, the defendant is hereby permanently restrained from creating any form of third party rights in respect of the second and third floor of property no..51/1 A, Street No.13, East Azad Nagar, Delhi. The Reader shall prepare a decree sheet. accordingly.

7. Before parting this Order, it is clarified that the plea of the defendant that on account of some oral partition done by the plaintiff no.3, Sh. Rajender Prasad Sharma, her husband, Late Sh. Vipin Kumar Sharma, had got the exclusive possession of the second and third floor of the suit property, has not been factored in this adjudication because (a) it is inconsistent with the unchallenged registered sale deed dated 28.09.2001, in the name of the plaintiff no.1 and (b) because it is devoid of any particulars viz. date, time etc. of such oral partition.

Also, it is clarified that the plea of the defendant she had never received the legal notice dated 18.04.2015, has not been factored in this adjudication because in view of Section 61 of the Easements Act, 1882, tile licence of the defendant to stay at the second and third floor of tile suit property, stood definitely revoked, with effect from the day, when the defendant had received the summons for settlement of issues of this suit. Lastly, it is clarified that the reliefs of mandatory injunction and permanent prohibitory injunction, sought by way of this suit, have been granted in favour of the plaintiff no.1 only because on account of the unchallenged registered sale deed dated 28.09.2001, only the plaintiff no.1 has the locus standi to seek the said reliefs.

8. The case shall now be taken up for further recording of evidence qua the claim of damages made by the plaintiffs, on 04.05.2018.”

31. The said order dated 05.03.2018 was challenged by the defendant i.e. respondent herein to the said suit in the first appeal i.e. RCA DJ No.52/18 and vide the impugned judgment dated 22.10.2018, the Ld. ADJ-03 held that there was no illegality in the reasoning given by the Ld. Trial Court in passing of a part decree under Order XII Rule 6 CPC, 1908 in favour of the plaintiffs i.e. respondents and against the defendant i.e. appellant and the appeal filed was thus dismissed.

32. The learned First Appellate Court vide its order dated 22.10.2018 has upheld the impugned order dated 05.03.2018 of the ASCJ (East), Karkardooma Court, Delhi and held the defence pleaded by the defendant i.e. appellant herein in her written statement and subsequent submissions made by her as being not tenable and not supported by the pleadings of the documents and it was further held by the Ld. First Appellate Court that it was an admitted position that the plaintiff no.1 i.e. respondent no.1 was the registered owner of the suit property. It was further observed vide paragraphs 6 to 10 to the effect that:-

'6. I have carefully heard the arguments and have gone through the record and in my opinion the suit for mandatory injunction against the licensee is maintainable in view of the law laid down by Sanl Lal Jain Vs. Avtar Singh and Josef and Others vs. Beni Mathew. It is seen that the plaintiff / respondent has registered sale deed in his favour which has not been challenged before any court of law by the defendants. The defendants / appellants are not having any document in their possession to show their title / ownership over the suit property. In fact the defendant / applicants have admitted the execution of the sale deed in favour of the plaintiff. The defendant has claimed inherited the ownership from her husband but it is seen that her husband himself was the licensee without having any document of title in his favour. In these circumstances, the contention of the appellant of being the owner is not tenable in law.

The Hon'ble High court of Delhi in a case Bhupender Singh Vs Sonu Kumar, C.R.P. 176/2017 held that:

' ... passing of decree for possession cannot be deferred, if the petitioner / plaintiff where to be found in titled there too, for the reason of respondent/ defendant intending to file a suit for setting aside of the sale deed lease deed, even in such suit is still within limitation. The facts remains that notwithstanding the written statement in the suit having been filed in February, 2015, the respondent /defendant till now has not filed any such suit. Thus, as of now there is no step taken by the respondent /defendant for rescission of the registrar of document aforesaid which established the tile of the petitioner / plaintiff to the property (though in a suit between landlord and tenant, such tile is not necessary) and the relationship of landlord and tenant between the parties. The said registered documents have to prevail, particularly when the execution and registration thereof is admitted. The plea of document having been got executed by misrepresentation cannot be a defense to a suit on the basis of the said document unless the said documents are so declared by a competent court of law.

*In the case of **Gorakh Nath Dube vs. Hari Narain Singh**(1973) 2 SCC 535 the Hon'ble Supreme Court held that:*

Distinction has to be made between cases where a document is wholly or partly invalid so that it can be disregarded by any court or authority and a document which has to be actually set aside before it can cease to have legal effect. To demonstrate it was started, that an alienation made in excess of power to transfer would be, to the extent of the excess of power invalid - an adjudication on the effect of such a purported alienation would be necessarily implied in the decision of the dispute involving conflicting claims to the rights or interest in the land; but where there is a document a legal effect of which can only be taken away by setting

it aside or by its cancellation, it must be held to binding on the parties so long as it is not canceled by a court having the power to the cancel it.

7. The next contention of the counsel of the respondent is that the test of the admission is on a meaningful reading of the pleadings and if on such reading of pleadings, it is found that the pretence made of a defence is not a defence in law and also in ignorance of Order XV R1 of CPC which provides that if the parties are not found at issue, on any proposition of law or fact, the court has to pronounce the judgment forthwith.

In Ashok Estate Pvt. Ltd. vs. Dewan Chand Builders Pvt. Ltd. 159 (2009) DLT 233, reiterated in judgement in CRP No.190/12015 titled as Vireet Investment Pvt. Ltd. vs. Vikramjit Singh Puri held:

- (i) that the plaintiff, if otherwise found entitled to decree on admission, cannot be deprived thereof by astute drafting to 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 proposition of law and fact;*
- (iv) a plea, which on the face of its is found by the court 'to be untenable, does not require the framing of any issues.*

In Adarsh Kumar Puniyani Vs. Lajwanti Piplani 2015 SCC online Del 14022 it was held that:

material proposition of law or fact would mean such issues which are relevant and necessary arise for deciding the controversy involved; if a plea is not valid and 'tenable in law or 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 Pvt. Ltd. Versus Rajinder Mohindra (2014) 208 DLT 201 holding that once it is found that there is 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 12 Rule 6 of the CPC, would not call for framing of issue.

*Hon'ble High Court of Delhi in case titled as Shiv Kumar Vs. Sumit Gulati *2015) 225 DLT 591 and Bhupender Jit Singh Vs Sonu Kumar, the Hon'ble High Court held that:*

' the court can exercise power U/o. 12 R 6 read with order 15 R 1 of CPC, when inter se the parties, there is no material issue requiring adjudicating by the way of trial'.

In another case the Hon'ble High Court of Delhi in case titled as Rama Devi Vs. Punam Chand Aggarwal 2008 (4) Civil Curt. cases 701 (Delhi) wherein it is held that:

' This is well settled that admission need not be made expressly in the pleadings, even on

constructive admission the court can proceed the pass decree in plaintiff favour U/o. 12 R 6 ofCPC'.

In case titled as Gajender Kumar Loond Vs. Samant Banara in IA Number. 1374/2011 in CS OS 1132/2011 it is held that:

.... , .. It is know well established that admission are not restricted to pleading. More often than not that the contents of the plaint are denied in order to delay the proceedings and procrastinate the incident of liability. Admission can, therefore, be justly or soundly drawn even from the attending circumstances, such as pleading in other suits or proceedings, or document exchange between the parties. In facts in my opinion document constitute the best source of admission of facts'.

8. *The documents like registered General Power of Attorney, receipt were executed in the name of the respondent no. 1 / plaintiff no.1 only. The original of these documents were shown to the Hon'ble Court during the course of arguments. The copies of the same are annexed here with for kind perusal. The consideration amount was also paid by the respondent no. 1 as evident from the receipt. The contention that the sale deed is null and void in view of section 25 of Contract is not tenable. On the other hand, the appellant has no documents in support of her contention that she inherited ownership right from her husband upon his death. Even her husband had no right, title and interest in respect of the suit property.*

It is further argued by the counsel for respondent that the appellant / defendant has filed the Written

*statement wherein the appellant has admitted in para 5 of the preliminary objection and para 1 of reply on merits that title documents of the property were executed in the name of the plaintiff no. 1. The counsel for respondent further argued, that defendant has not put forth any claim independently in respect of the suit property nor file any proceedings challenging the title of the plaintiff no. 1 in respect of the suit property. **The defendant is claiming through her husband who was a licensee in respect of the suit property for use and occupation only. Therefore, the right of the defendant erupts from her husband who stood as licensee and terminated with the cancellation of license for use and occupation of the premises in question. Although, the license of the defendant came to an end by serving legal notice, terminating her license of use and occupation even otherwise with the filing of the present suit the defendant has full notice of termination of license in respect of the suit premises.***

9. In view of the above discussion, I am in agreement with the Ld. Trial court and I am of the opinion that all the defences pleaded by the defendant in the Written statement and subsequent submissions made by the appellant are untenable and are not supported by pleadings or the documents filed by the defendant. It is admitted position that the plaintiff is the registered owner of the suit property and there is no title document in favour of the defendant or her deceased husband.

10. In these circumstances, I do not find any illegality in the reasoning given by the Ld. Trial court in passing the part decree U/o. 12 R 6 CPC in favour of the plaintiff I/respondent and against the appellant/defendant. Accordingly, appeal filed by the appellant is dismissed. File be consigned to record room. The trial court record be sent back to the concerned court with copy of this order."

33. The appellant thus filed the present Regular Second Appeal under Section 100 of the CPC, 1908 being aggrieved by the order dated 05.03.2018 under Order XII Rule 6 CPC, 1908 in Suit No.8635/16 passed by ACSJ and also by the judgment and decree dated 22.10.2018 of the Ld. First Appellate Court in RCA DJ No.52/18.

34. The appellant vide the present Second Appeal has reiterated the averments that have been made by her in her written statement before the Ld.Trial Court and has contended that the respondent no.1 i.e. Plaintiff no.1 herein is not the owner of the suit property and that further the suit property belonged to the plaintiff no.3 her father in law arrayed as the respondent no.3 herein and Late Shri Vipin Sharma, her late spouse, and after the death of Shri Vipin Sharma, the appellant and her daughter Shreya had inherited the share of Shri Vipin Sharma and during the lifetime of Vipin Sharma, the Plaintiff no.3 i.e respondent no.3 herein had orally partitioned the property bearing no. 51/1A, Street No.13, East Azad Nagar, Delhi 110051 that the first floor was given to the share of Plaintiff no.1 i.e. respondent no.1 herein which has been sold and whereas the second and third floor were given to Shri Vipin Sharma i.e . the husband of the appellant and that he had become the owner of the said floors and that the defendant i.e. appellant herein along with her husband (since deceased) had been enjoying the possession of the suit property without any hindrance from any corner and after the demise of her spouse, she and her minor daughter had inherited the ownership rights of those floors. The

appellant has thus contended that the following substantial questions of law arises out of the present appeal which are to the effect.

- 1. Whether the judgment and decree passed by courts below is suffering from perversity and illegality.*
- 2. Whether the courts below have committed an error in not taking in to consideration and appreciating the evidence on record.*
- 3. Whether the judgment and decree passed courts below is suffering from non joinder of necessary parties.*
- 4. Whether the courts below ignore and disturb the settled principle of law that the fact which have been admitted by other side need not to be proved.*
- 5. Whether the courts below refused to consider the relevant evidence which have been adduced on the disputed issue gives birth to the substantial question of law.*
- 6. Whether the courts below have arrived at its finding by ignoring important relevant facts and admission.*

35. The appellant has thus submitted that the impugned judgment and decree is arbitrary and perverse and the documents and other material brought on record are wholly unsustainable and violates good conscience, fair play and principle of natural justice and thus indefensible. Inter alia the appellant has submitted that the impugned judgments and decree are based on erroneous premises in an arbitrary and whimsical manner and are based on subjective notions, assumptions and presumptions.

36. Inter alia, the appellant has submitted that the judgment and decree passed by the Ld. Trial Court does not take into account the objections raised by the appellant herein under 1 Rule 9 CPC, 1908 in as much as the defendant i.e. appellant herein has taken an objection of non joinder of necessary parties. Inter alia the defendant i.e. appellant herein has submitted that the Trial Court and the First Appellate Court had taken a wrong approach of law at the time of passing of the impugned judgment and decree and that the decree as passed which is a discretionary relief ought not to have been granted by the Ld. Trial Court.

37. Reliance was also placed on behalf of the appellant on the verdict in *M/s Jeevan Diesels and Electricals Ltd. Vs M/s Jasbir Singh Chadha (HUF) & Anr. (2010) AIR SCW 297* wherein it has been laid down that as to whether or not there was a clear, unambiguous admission by one party of the case, the same was essentially a question of fact and could not be decided on the basis of a judicial precedent.

38. Reliance was also placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in *Anathula Sudhakar Vs P.Buchi Reddy (Dead) by LRs & Ors. AIR 2008 Supreme Court 2033* to contend that the relief of declaration was not maintainable as the appellant had raised a cloud on the title of the respondent/plaintiff for the reason being that the title documents were against the name of

the respondent as well as her deceased husband by concealing the documents, the respondent no.1/ plaintiff no.1 had on the basis of the alleged power of attorney got the sale deed executed in his favour which was barred .

39. During the course of the submissions that were made on behalf of the appellant, further reliance was also placed on the verdict of this Court in **Shiv Kumar Vs Sumit Gulati (2015) DLT 591** to contend that the disputed rights of the plaintiff no.1 and the defendant, could not have been adjudicated upon without trial, reliance on the other hand was also placed by the respondent on the verdict of Hon'ble the Supreme Court in **Sant Lal Jain Vs Avtar Singh (1985) 2 Supreme Court Cases 332** to contend to the effect that once a licensee is always a licensee and it is not open to the licensee during the subsistence of a licence or in a suit for recovery of possession of the property instituted after the revocation of the licence to set up a title to the property in himself or anyone else.

40. Reliance was also placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in **Valliammal (D) by Lrs. Vs Subramaniam & Ors. (2004) 7 Supreme Court Cases 233** to contend to the effect that as laid down in *Jaydayal Poddar V. Bibi Hazra*, *Krishnanand Agnihotri V. State of M.P.*, *Thakur Bhim Singh V. Thakur Kan Singh*, *Pratap Singh Vs Sarojini Devi and Heirs of Vrajlal J.Ganantra Vs Heirs of Parshottam S.Shah* and it has been held in the judgments referred to above that the question whether a particular sale

is a benami or not, is largely one of fact, and for determining the question on absolute formulas or acid test, uniformly applicable in all situations can be laid.

41. Reliance was placed on behalf of the respondent no.1 on the verdict of the Hon'ble Supreme Court in **Joseph Severance and Others Vs Benny Mathew and Others (2005) 7 Supreme Court Cases 667** to contend to the effect that the licensee's occupation does not become hostile possession or the possession of a trespasser once the moment the licence comes to an end but the licensor has to file the suit with promptitude and if it is shown that within reasonable time a suit for mandatory injunction was filed with a prayer to direct the licensee to vacate the premises in suit, the same can be granted.

42. Qua this submission, it was contended on behalf of the respondents that the Court needs to spell out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

- a) The source from which the purchase money came;
- b) The nature and possession of the property, after the purchase;
- c) Motive, if any, for giving the transaction a benami colour;
- d) The position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
- e) The custody of the title deeds after the sale; and
- f) The conduct of the parties concerned in dealing with the property after the sale.

43. It is essential to observe that the observations of the Hon'ble Supreme Court in ***Valliammal (D) by Lrs. Vs Subramaniam & Ors. (2004) 7 Supreme Court Cases 233*** are wholly inapplicable to the facts and circumstances of the instant case in as much as in the instant case there is a categorical clear admission on the part of the appellant that the registered sale deed of the property in question is in the name of the respondent no.1.

44. Reliance was also placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in ***Duvuru Jaya Mohana Reddy & Anr. Vs Alluru Nagi Reddy and others 1994 Supp (2) SCC 559*** and on the verdict of this Court in ***A.N.Kaul Vs Neerja Kaul & Anr. 2018(3) SCC OnLine Del 9597*** decided on 03.07.2018 to contend that the decree and order can be passed in the instant case submitting to the effect that as laid down thereby that even if there is no express admission in the written statement but an intelligible reading of the written statement shows 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. The specific reliance was also placed on behalf of the respondents on observations in para 10 of the said verdict which read to the effect:

“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 in 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. Lajwanti Piplani, 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 please 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 mala fide 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 Atma Ram Properties (P) Ltd.***, (2013) 205 DLT 302.”

45. Through the written submissions submitted on behalf of the respondents, the contentions raised through the plaint and through the arguments addressed were reiterated. Inter alia the respondents submitted that the contention raised by the appellant herein that the consideration amount in respect of the suit property had jointly been paid by her husband and respondent no.3 i.e. the father of the respondent no.1, the plaintiff no.1 herein and the contention of the appellant that the claim of the appellant was that the suit property was a benami property was not supported by any document and that on the other hand the plaintiff no.1 i.e. respondent no.1 had filed a payment receipt whereby he had made an entire payment with respect to the suit property to the previous owner and that thus at the time of the purchase of the suit property, the respondent no.1 i.e. plaintiff no.1 was running a business under the name and style of M/s Vikas Textiles and had also taken a loan from Jammu and Kashmir Bank, Vishwas Nagar, Shahdara, Delhi for construction of the suit property.

46. Inter alia it was submitted on behalf of the respondents that the respondent no.1 also in cross examination had stated that at the time of the purchase of the suit property he was running a textile business and had also taken a loan with the respect to the suit property and could produce the relevant record pertaining to the loan transaction. It was further submitted on behalf of the respondents that respondent no.3 had also stated these facts in cross examination as well that the appellant had not disclosed these

aspects and the appeal for her own motives. Inter alia the respondent submitted that the loan payment receipt and acknowledgement letter issued by the bank and other relevant documents and the cross examination of the respondent no.3 annexed with the written arguments brought forth the contentions of the respondent wholly that the respondent no.1 was the undisputed owner of the suit property.

47. Inter alia reliance was also placed on behalf of the respondents on the verdict of this Court dated 07.02.2019 in RSA No.10/2019 titled ***Deepak Aggarwal Vs Shakuntala Devi*** to contend to the effect that the Regular Second Appeal in that case wherein similar issues were raised had declined by this Court and that the facts of the instant case are in *pari materia* thereto and that the appeal is liable to be dismissed.

48. Reliance was also placed on behalf of the respondents on the verdict of this Court in ***Bhavna Khanna Vs Subir Tara Singh*** decided on 01.02.2019 in CS(OS) No.356/2016 with observations in para 23 thereof wherein it was observed to the effect:

“Be that as it may, the Benami Transactions (Prohibition) Act, 1988 which came into force on 5th September, 1988 i.e. much prior to the sale deed dated 16th December 2003, defined a benami transaction as a transaction in which property is transferred to one person for a consideration paid or provided by another persons. Section 3 thereof barred all persons from entering into benami transaction. Section 4 of the Act barred any

defence in any suit, claim or action based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person. The claim of the defendant that out of total sale consideration of Rs.55 Lacs, Rs.39.5 was contributed by him but the sale deed of the property obtained in the exclusive name of his wife Dr.Rachana Khanna falls within the definition of benami transaction and which transaction was barred on the date of sale deed and the defendant is also barred from defending this suit on the plea of being the benami joint owner of the property. The said Act was, vide amendment of the year 2016, renamed as Prohibition of Benami Property Transactions Act,1988 and through there has been an overhaul of all the provisions of the earlier statute but the effect remains the same. Section 4 bars a defence in respect of any property held benami. The defence of the defendant in the present suit is thus barred by the said law and once the defence is barred, again permitted evidence to be led would be only at the cost of the valuable time of this Court and the Court ultimately after recording of evidence also will be bound to decide in accordance with law. It is for this reason that I say that the defence of the defendant of joint ownership does not raise any material proposition of fact or law for an issue to have been framed thereon”.

49. It was submitted on behalf of the respondents that the appellant contended in the present appeal and in written statement that the suit for Mandatory injunction and permanent Injunction is not maintainable as the plaintiff no.1 was claiming possession in a suit of Mandatory Injunction and the Ld trial court had no jurisdiction

as the suit was improperly valued for the purpose of court fee and jurisdiction and it was submitted that this plea of the appellant is untenable in view of the judgment of **Sant Lal Vs Avtar Singh (1985) 2 SCC 332** and **Joseph Severance & Ors. Versus Benny Mathew & Ors. (2005) 7 SCC 667**. The respondents through their written submissions further contended that the Ld. Trial Court had also relied on the said judgments.

50. Inter alia it was reiterated by the respondents that the contention of the appellant that the suit filed without seeking a declaration was not maintainable is untenable in view of the verdict of the Hon'ble Supreme Court in ***Sant Lal Jain Vs Avtar Singh (Supra)*** and ***Joseph Severance and Others Vs Benny Mathew (supra)*** in as much as the Hon'ble Supreme Court in the said cases has held that in case of licensor and licensee relationship, the licensor had filed a suit for mandatory injunction against the licensee seeking a direction to the effect that the licensee be directed to vacate the licensed premises provided the suit is filed by the licensor within a reasonable time of terminating / revoking the licence of the licensee.

51. Inter alia the respondents have submitted that though the appellant has contended in the present appeal that in order to have ownership rights from her husband in respect of the suit property after the death of her husband, no document in relation thereto was filed neither before the Trial Court nor before the First Appellate

Court nor before this Court and that the statement made by the appellant is of no relevance without for want of documents and furthermore, the existence of the unchallenged registered sale deed in the name of the respondent no.1 i.e. plaintiff no.1 has not been dislodged by the appellant.

52. It was further submitted on behalf of the respondents that the appellant had not sought the setting aside of the sale deed in favour of the respondent no.1 and thus the passing of a decree in relation to the possession of the property cannot be deferred as laid down by this Court in ***Bhupinder Jeet Singh Vs Sonu Kumar, CRP No.176/2017*** where the plaintiff has been found to have a title of the property in suit in as much as till date the appellant has not filed any suit seeking the setting aside of the sale deed in favour of the respondent no.1 and that the said registered document would prevail especially when the execution and registration thereof is admitted and the plea thus taken by the appellant that the same was executed through misrepresentation cannot be a defence to the suit unless the said document is so declared invalid by a competent court of law.

53. Reliance was also sought to be placed on behalf of the respondent no.1 on the verdict of the Hon'ble Supreme Court in ***Gorakhnath Dube Vs Hari Narayan Singh (1973) 2 SCC 535*** to contend to the effect that in the case of ***Gorakh Nath Dube vs. Hari Narain Singh. (1973) 2 SCC 535*** the Hon'ble Supreme Court held that

distinction has to be made between cases where a document is wholly or partly invalid so that it can be disregarded by any court or authority and a document which has to be actually set aside before it can cease to have legal effect. To demonstrate it was stated, that an alienation made in excess of power to transfer would be, to the extent of the excess of power invalid - an adjudication on the effect of such a purported alienation would be necessarily implied in the decision of the dispute involving conflicting claims to the rights or interest in the land; but where there is a document a legal effect of which can only be taken away by setting it aside or by its cancellation, it must be held to be binding on the parties so long as it is not cancelled by a court having the power to cancel it with it having been submitted by the respondent no.1 that in the instant case the defendant i.e. appellant does not controvert the execution and registration of the sale deed and thus the respondent no.1 herein cannot be declined the relief that has been sought as was granted by the order dated 05.03.2018 of the Ld.ASCJ, Karkardooma Court.

54. The respondent no.1 has further sought to submit that the pleadings on the record bring forth a clear admission on the part of the appellant herein of the title of the respondent no.1 for the suit property in question in which the appellant's spouse resided only as a licensee and which licence stood terminated by his demise and further on the issuance of the notice of termination of the licence by the respondent no.1 and which stood further terminated by institution of the suit in question seeking the grant of permanent and mandatory injunction.

55. Inter alia reliance was also placed on behalf of the respondents on the verdict of this Court in *Ashoka Estate Pvt. Ltd. Vs Deewan Chand Builders Pvt. Ltd.*¹⁵⁹ (2009) DLT 233 reiterated in judgment CRP No.190/2015 titled as *Vireet Investment Pvt. Ltd. Vs Vikramjit Singh Puri* to contend to the effect that where the plaintiff is found entitled to decree on admission, he cannot be deprived thereof by astute drafting of the written statement nor by taking pleas therein which have no legs to stand upon and that the Court has to read the pleading of the parties meaningfully and issues are to be framed on material and not on all propositions of law and fact and that the plea which on the face of its is found by the Court to be untenable, does not require the framing of any issues.

56. It was thus submitted on behalf of the respondents that no substantial question of law whatsoever in terms of Section 100 of the CPC, 1908 amended arises in the instant case and reliance was also sought to be placed on behalf of the respondents on the verdict of this Court in *Adarsh Kumar Puniyani Vs Lajwanti Piplani* 2015 SCC Online Del 14022 wherein it was laid down that the material propositions of law and fact mean such issues as which are relevant and necessary and arise for deciding the controversy and if a plea is not valid and not tenable in law and not necessary for deciding the controversy involved, the Court would not be bound nor justified in framing issues on such unnecessary or baseless pleas, thereby causing

unnecessary and avoidable inconvenience to the parties and waste of valuable Court time.

57. Reliance was also placed on behalf of the respondents on the verdict in ***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.

58. Reliance was also placed on behalf of the respondent no. 1 on the verdict of this Court in ***Shiv Kumar Vs Sumit Gulati 225 (2015) DLT 591*** to contend that the Court can exercise its power under Order XII Rule 6 CPC read with under Order 15 Rule 1 CPC inter se the parties where there is no material issue arising which require the adjudication by way of the trial.

59. Inter alia reliance was placed on behalf of the respondents of this Court in ***Rama Devi Vs Punam Chand Aggarwal 2008(4) Civil Court Cases 701(Delhi)*** wherein it was held that it is well settled that an admission need not be made expressly in the pleadings and that even on constructive admission the Court can proceed to pass a decree in favour of plaintiff under Order XII Rule 6 of CPC. Reliance was also placed on behalf of the respondents on the verdict of this Court in ***Gajender Kumar Loond Vs Samant Brara*** in **IA No. 13740/2011 in CS(OS) No.1132/2011** wherein it has been laid down that it is well

established that admissions are not restricted to pleadings and more often than not that the contents of the plaint are denied in order to delay the proceedings and procrastinate the incident of liability and admission can, therefore, be justly or soundly drawn even from the attending circumstances, such as pleading in other suits or proceedings or documents exchanged between the parties and in fact documents constitute the best source of admission of facts.

60. Inter alia it was submitted on behalf of the respondents while placing reliance on the verdict in **Gajender Kumar Loond** (supra) that the provisions of Order XII Rule 6 of the CPC, 1908 have vested a wide discretion to the Court to decree the suit to the extent of admission made by the defendant and that such a power can be exercised by the Court on the examination of the pleading and other material appearing on the record.

61. The respondents have also refuted the claim of the appellant that the documents like GPA and receipt were executed in the name of the respondent no.1 i.e. plaintiff no.1 as well as the husband on the basis of which the sale deed was executed only in the name of the respondent no.1 and rather the respondents have submitted on the record the copies of the registered GPA and receipt along with the written arguments to show that the said documents were executed in the name of the plaintiff no.1 i.e. respondent no.1 only and to reiterate that the consideration amount was also paid by the respondent no.1 as evident from the receipt dated 27.12.1999. Inter alia the respondents

have contended that the appeal is barred by time having been filed beyond the period of limitation and has not been accompanied with an application seeking condonation of delay in filing the appeal.

62. Inter alia, reliance was also placed on behalf of the respondents on the verdict of this Court in ***Sarvinder Singh & Anr. VS Vipul Tandon*** CS(OS) No.2453/2015 wherein it has been laid down that a plea which is not tenable, or which is not stable, cannot come in the way of the Court in decreeing the suit under Order XII Rule 6 CPC, 1908.

63. As regards the contention raised on behalf of the appellant by the learned counsel for the appellant that issues were framed on 12.10.2005 in the suit by the then ASCJ (East) to the effect:-

1. Whether the plaintiffs are entitled for relief of perrilant injunction as prayed for against defendant no.1 and 2 with respect to suit property and against defendant no.3 with respect to electricity supply? OPP .
2. Whether the plaintiffs have no right, title or interest in the suit property? OPD 1 & D2.
3. Whether the plaintiffs have no locus standi to file the present suit seeking relief of permanent injunction against defendant no.3 ?
OPD 3
4. Relief,

reliance was also placed on behalf of the respondents on the verdict of this Court in *Saurabh Sharma Vs Om Wati CS(OS) No.430/2016* decided on 25.05.2018 that merely because the issues have been framed in the suit does not prevent this Court from, at a subsequent stage, invoking Order XII Rule 6 and / or Order XV of the CPC for disposing of the suit.

64. The respondents have thus contended that the appeal is itself not maintainable as there is no substantial question of law that appears on the merits of the appeal and no that there is error in the eye of law in the judgments of the Ld. Trial Court nor of the First Appellate Court nor are there any infirmity therein whatsoever.

65. On a consideration of the submissions that have been made on behalf of either side and the catena of verdicts that have been relied upon on behalf of either side, it is apparent that the property in suit i.e. second and third floor of the property bearing no. 51/1A, Street No.13, East Azad Nagar, Delhi 110051 stands registered in the name of the respondent no.1 i.e. the plaintiff no.1 of the suit bearing CS No.8635/2016. The contention that has been raised by the appellant that the same was registered in the name of the plaintiff no.1 i.e. respondent no.1 out of love and affection and because of eviction proceedings instituted by plaintiff no.3 i.e. Shri Rajendra Prasad Sharma, her father in law, does not suffice to accept the said contention as raised by the appellant for it cannot be contended by the

appellant in terms of the Benami Transactions (Prohibition) Act, 1988. Furthermore, it is essential to observe that the present appellant's claim also does not fall within the exception (iii) to Section (2)(9)(A) of the Prohibition of Benami Property Transactions Act, 1988 which reads to the effect as under:-

“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) ”,

as observed by this Court in ***Deepak Aggarwal & Anr. Vs Shakuntala Devi (Supra)***, the benefit of the said provision also can only be considered to be in relation between the individual who has paid for

the purchase of any property as consideration in the name of his spouse or in the name of the child of any such individual and can certainly not relate back to any other property or joint property or an HUF property or any trust property in relation to which there is only an averment made on behalf of the appellant in the written statement that the property in question was purchased with the funds of her deceased spouse or her father in law.

66. Further, the testimony of the father in law of the appellant i.e. of Shri Rajendra Prasad Sharma (respondent no.3 herein) examined as PW2 placed on record is categorical through his cross examination dated 01.12.2016 when he states:-

*“The Sale Deed of the suit property was executed in September 2001. At that point of time I was residing at H. No. 4/2706, Gali no. 5, Bihari Colony, Shahdara, Delhi-32. The said house was on rent with me. A case regarding the said tenanted premises was going on at that point of time. The said case was between Hari Singh and me who was the son of the landlord. It is wrong to suggest that the due to the said on going case I executed the transfer documents in favour of plaintiff no.1 who did not pay any consideration amount. In the year 2001, the plaintiff no.1 was doing the work of tuition as well as business of cloths. It is wrong to suggest that plaintiff was not doing the work of tuition or doing the business of cloths. **It is wrong to suggest that the husband of defendant no.1 had paid any consideration amount in respect of the suit property.***

*I am graduate. **It is wrong to suggest that I am owner of the suit property as mentioned in para 2 of my affidavit.** Vol. It is typographical error. It is wrong to suggest that*

*aforesaid sale deed was got executed by me against the name of plaintiff no.1 by way of fraud and forgery against the defendant no.1 and her husband. I cannot tell the date, month and year of the construction of the second and third floor as the knowledge of said fact of my son. I also cannot tell about the date, month, and year of the construction of first and ground floor as the knowledge of the said fact of my son. **It is wrong to suggest that the family partition was effect by virtue of which the ground and first floor was given to the plaintiff and upper floors were given to the husband of defendant.** It is wrong to suggest that the documents referred in para 3 of the affidavit only pertained to the ground and the first floor of the suit property. It is wrong to suggest that plaintiff no.1 and his wife are residing in Vaishali since the purchase of the suit property. The property situated at Vaishali is in the name of plaintiff no.1. It is wrong to suggest that the property at Vaishali was purchased by plaintiff no.1 out of the consideration received by selling ground and first floor of the suit property. **It is wrong to suggest that the plaintiff no.1 has falsely claimed that he inducted his elder brother as a licensee in the suit property.** It is wrong to suggest that all the articles lying at the second and third floor of the suit property belongs to defendant. It is wrong to suggest that the plaintiff no.1 nor his family ever resided in the third floor of the suit property. My elder son expired on 13.12.2014 while on the way to Hospital. It is wrong to suggest that all the disputes with the defendant occurred on the death of the husband. Vol. The dispute arose during the life time of my son when I disowned him in the year 2005.”*

It is significant that PW2 Shri Rajendra Prasad Sharma i.e. the father in law of the appellant and the father of the respondent no.1 as also of the spouse (since deceased) of the appellant has categorically denied the existence of any family partition effected between him and his

sons whereby the ground and first floors were given to the plaintiff i.e. respondent no.1 herein and the upper floor given to the husband of the appellant herein. Thus it becomes apparent as rightly held by the LD. ACSJ, Karkardooma Court vide the impugned order dated 05.03.2018 and by the Ld. First Appellate Court vide its judgment dated 22.10.2018 in RCA DJ No.52/18 that it cannot be thus contended by the appellant herein that the suit filed by the respondent no.1 seeking the grant of permanent and mandatory injunction as prayed by them without seeking the relief of declaration was not maintainable could not be upheld. No document whatsoever in support of the contention of the appellant that she had inherited the ownership rights from her spouse on his demise are placed on record as rightly observed by the First Appellate Court and thus taking the same into account, it is apparent that there is no infirmity whatsoever in the impugned judgment of the Ld. Trial Court dated 05.03.2018 as well as of the First Appellate Court dated 22.10.2018 which require the formulation of any substantial question of law whatsoever in as much as the claim of the appellant that the substantial question of law as sought to be formulated as reproduced hereinabove in para 34 cannot be granted as none of the said issue arise.

66(A). In the circumstances, in as much as there is no substantial question of law that arises for determination and as this Court cannot substitute its opinion for the opinion of the First Appellate Court unless it finds the conclusion drawn by the First Appellate Court or even of the Ld. Trial Court to be erroneous or contrary to the

mandatory provision of law or being based on inadmissible evidence, in as much as there is nothing on the record to bring the same forth that there is any substantial question of law that arises which is a *sine qua non* as laid down by the Supreme Court in *Union of India Vs Ibrahim Uddin & Anr. (2012) 8SCC 148* for exercise of jurisdiction in terms of Section 100 of the CPC, 1908 as amended, the Second Appeal RSA No.23/2019 is liable to be dismissed and is thus dismissed.

67. The records of the Trial Court and the First Appellate Court be returned forthwith.

JULY 21, 2020/sg

ANU MALHOTRA, J.