

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

Judgment reserved on:14.09.2021.

Date of decision: 24.11.2021.

+ EX.F.A.13/2019 & CM APPL. 15254/2019

HINDUSTAN PETROLEUM CORPORATION LTD. Appellant

Through: Mr. Sandeep Sethi, Sr. Adv.
with Mr. Naveen Raheja, Ms.
Aditi Shastri, Advocates.

Versus

AJAY BHATIA Respondent

Through: Mr. MM Kalra, Advocate.

AND

+ EX.F.A.30/2019 & CM APPL. 33215/2019

HINDUSTAN PETROLEUM CORPORATION LTD. Appellant

Through: Mr. Sandeep Sethi, Sr. Adv.
with Mr. Naveen Raheja, Ms.
Aditi Shastri, Advocates.

Versus

AJAY BHATIA & ORS. Respondent

Through: Mr. MM Kalra, Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

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1. The Ex.F.A.13/2019 & Ex.F.A.30/2019 are being taken up together, in as much as, the issue involved in both the Execution First Appeals relates to the contention raised on behalf of the appellant herein that an inaccurate site plan had been filed by the respondent Ajay Bhatia herein in CS(OS) No.1828/2006 against the Hindustan Petroleum Corporation Limited arrayed as the present appellant as also against the Union of India vide which suit the plaintiff thereof arrayed as the sole respondent to EX.F.A.13/2019 and arrayed as the respondent no.1 to EX.F.A.30/2019 with defendant no.2 to the said suit Hindustan Petroleum Corporation Limited, Laxmi Nagar, New Delhi being arrayed as the respondent no.2 to EX.F.A.30/2019, had filed a suit for recovery of possession of land and mesne profits with the following prayers:-

“a) a decree for recovery of possession in respect of plot measuring 9,700. sq.ft. situated at 4/4 Azadpur, G.T. Road, Delhi as shown in red in the plan may be passed in favour of the Appellant and against the defendants as shown red in the plan attached.

b) the decree for recovery of Rs. 1965000/- being the damages @ Rs. 50000 per month from July 2003 to June 2006 be also passed in favor of Plaintiff and against the Defendants.

c) A decree for recovery of future mesne profits @Rs.50000/- per mensem from the institution of the suit till the realization be also passed.

d) The suit be decreed with costs.”

Whereas, the EX.F.A.13/2019 relates to the prayer made by the appellant seeking the setting aside of the order dated 15.03.2019 of the Court of the learned ADJ, District Court, Rohini in Execution Petition

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No.290/2017 in which the application dated 29.09.2017 filed by the DH i.e. the respondent to EX.F.A.13/2019 under Order XXI Rule 97 of the CPC seeking the possession of the entire land in dispute was allowed qua which the judgment dated 21.11.2013 passed by this Court for possession of 9700 Sq. Ft. of property situated at 4/4, Azad Pur, G.T. Karnal Road, Delhi as per the site plan filed with the plaint, which judgment was upheld by the Hon'ble Division Bench of this Court vide order dated 05.02.2014 in RFA(OS) 36/2014 and of which there had been a part execution of the decree by the bailiff vide proceedings dated 15.09.2014 whereby possession of 7075 sq. yards had been taken from the JD by the bailiff and the objections that had been filed by the JD i.e. the appellant herein seeking the correction of the site plan vide which the decree sought to be executed were held to be sham and were dismissed for the remaining portion of land.

2. Vide the impugned order dated 15.03.2019, the prayer made by the JD i.e. the appellant herein vide an application dated 18.09.2014 for restoration of possession taken in part execution of decree was also dismissed and the JD i.e. the appellant herein was directed to remove the entire plant and machinery including underground tanks, petrol and diesel etc. from the suit property within a period of four weeks from the date 15.03.2019 qua which the execution proceedings were stayed vide order dated 11.04.2019 in EX.F.A.13/2019. Vide the said impugned order dated 15.03.2019, the prayer made by the Judgment Debtor, the appellant vide an application dated 22.08.2014 under Order XXI Rule 97 of the CPC seeking dismissal of the execution petition as being not executable,- was also dismissed.

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3. Vide the order impugned order dated 19.07.2019 in Execution Petition No.212/2019 as challenged in Ex.F.A.30/2019, the objections filed by the JD i.e. the present appellant as well as the application under Order XXI Rule 26 were both dismissed. EX.F.A.30/2019 relates to the impugned order dated 19.07.2019 of the learned ADJ-02, North West, Rohini, Delhi which relates to prayer made by the DH seeking execution of delivery of mesne profits qua the suit property i.e. 4/4, Azad Pur, G.T. Karnal Road, Delhi which is the same property qua which suit bearing CS(OS)1828/2006 was filed by the plaintiff herein i.e. the Respondent Shri Ajay Bhatia.

4. Both EX.F.A.13/2019 & EX.F.A.30/2019 relate to the same issue of an inaccurate site plan filed by the plaintiff raised by the appellant that the property in suit in CS (OS)1828/2006 qua which vide judgment dated 21.11.2013, the said suit was decreed in terms of prayer clause (a) referred to hereinabove in para 1 with the defendant no.1 i.e. Hindustan Petroleum Corporation Limited, the appellant herein having been directed to restore to the plaintiff the vacant and peaceful possession of the suit property as shown in red in the site plan annexed with the plaint with the matter having been directed to be resumed for remaining prayers on 03.01.2014, whereafter, vide judgment dated 20.08.2018 in CS No.75297/2016 of the Court of the learned ADJ-02, North-West, Rohini after the suit in relation to the relief of mesne profits had been transferred to the District Courts on change of pecuniary jurisdiction in relation to the mesne profits for the very same property i.e. 4/4, Azad Pur, G.T. Karnal Road, Delhi measuring 9700 sq. ft., the suit was decreed for the grant of mesne

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profits at the rate of Rs.50,000/- per month from July 2003 till vacation of the said property by the defendant nos. 1 & 2 i.e. the Hindustan Petroleum Corporation Limited situated at Bombay and Delhi respectively with the costs of the suit in fact related to the property in plot no.4/5, G.T.Karnal Road, Azad Pur, Delhi and not Plot no.4/4, Azad Pur, G.T.Karnal Road, Delhi.

5. The suit property i.e. 4/4, Azad Pur, G.T. Karnal Road, Delhi was given on lease to M/s Caltex (India) Ltd. vide a lease deed dated 15.10.1970 by its owner late Sh.Shadi Lal Bhatia S/o Sh.Chaman Lal Bhatia which M/s Caltex (India) Ltd. had since merged into defendant no.1 as arrayed to CS(OS) No.1828/2006 i.e. Hindustan Petroleum Corporation Limited with its registered office at 17, Jamshedji Tata Road, Mumbai wherein a retail outlet was being carried out in the name of M/s Tej Service Station. The said original vacant piece of land measuring 9700 sq. ft. situated at 4/4/, Azad Pur, G.T. Karnal Road, Delhi is stated to have been let out by Sh.Shadi Lal Bhatia by means of an indenture of lease dated 15th October 1970, which was duly registered with the Sub-Registrar, Dist. No.1, Delhi which lease was initially for a period of 10 years and after the demise of Sh.Shadi Lal Bhatia, his widow Smt. Rajeswari Bhatia inherited the estate and the property was under the tenancy of Defendants No.1 and 2, of whom defendant no.2 is the Hindustan Petroleum Corporation Limited situated at 7th Floor Core-II, Laxmi Nagar, New Delhi 110092 and as per the averments made in the plaint in CS(OS) No.1828/2006, the defendant nos. 1 & 2 had started paying the rent of the land to Smt. Rajeswari Bhatia and the lease was further extended as per the terms

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and conditions of the indenture of lease deed dated 15.10.1970 and the said extension was unilateral and no fresh agreement was executed. Smt.Rajeshwari Bhatia is stated to have expired on 22.11.1993 and during her lifetime she executed a Will dated 05.06.1989 and in terms of the said Will, the land in suit i.e. 4/4, Azad Pur, G.T. Karnal Road, Delhi fell to the share of the plaintiff, i.e. Sh.Ajay Bhatia and the plaintiff was also granted probate/ letters of administration of the said will and the land situated at 4/4 Azadpur G.T. Road, Delhi measuring 9700 sq. yds. fell to the exclusive share of the Plaintiff i.e. the respondent herein named Ajay Bhatia and he had become the absolute owner of the said piece of land.

6. As per the plaint itself, the adjoining land bearing No. 4/5 Azadpur G.T. Road, Delhi fell to the share of the other legal representatives, namely Shri Anil Bhatia, Smt. Renu Bhatia and Smt.Anuradha Kapoor, which was also stated to be under the unauthorized occupation of the Defendants No.1 and 2. It had been stated through the plaint by the plaintiff that despite the expiry of the lease period and despite the repeated requests made by the plaintiff to the defendants to handover the vacant possession of the said piece of land instead of vacating the said plot, the Defendants had been sending the rent cheques in favor of Plaintiff by means of courier which were not accepted by the plaintiff and that the plaintiff had only received the damages upto June, 2003 and that after the expiry of the lease, the Defendants were liable to pay the damages by way of mesne profits to the Plaintiff for being in an unauthorized occupation of the piece of land since the tenancy had come to an end. It was submitted by the

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plaintiff that instead of making the payment of mesne profits the Defendants with some ulterior motive started sending the cheques @ Rs. 4500/- per month which were not accepted by the Plaintiff. It was also submitted by the plaintiff that in order to avoid any technical objections, the plaintiff also terminated the tenancy by serving a legal notice dated 31.01.2006 but despite the same, the defendants failed to vacate the premises.

7. On an application i.e. I.A.16435/2010 under Section 151 of the Code of Civil Procedure, 1908 filed by the plaintiff in CS(OS) No.1828/2006 before this Court seeking a decree of recovery of possession in favour of the plaintiff and against the defendants in terms of the lease deed dated 15.10.1970 as per which lease deed the plaintiff was occupying a piece of land/plot measuring 9700 sq. feet situated at 4/4, Azad Pur, G.T. Karnal Road, Delhi in view of the averments made in paragraph 9 of the written statement of the defendant no.1, wherein, it was stated to the effect:-

“9.

The term of 10 years commencing from 1.4.99 expires on 31.3.09 and thereafter is renewable for the same period that is for a further period of 40 years from 1.4.09 as per the same terms and conditions as contained in the Lease Deed dated 15.10.70.”

the contention raised by the defendants in reply to this application I.A.16435/2010 was to the effect that the plaintiff was not the owner of the suit property i.e. 4/4, Azad Pur, G.T. Karnal Road, Delhi and the suit for recovery and possession was not maintainable and in the

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rejoinder it was stated that the suit property number is not 4/4 and the said number was only a landmark for the purpose of identification.

8. Vide paragraphs 4, 5 & 6 of the order dated 21.11.2013 in CS(OS) No.1828/2006, it was observed to the effect:-

“4. Admittedly, the suit property was given on lease to the erstwhile M/s CALTEX (India) Limited and has been duly Ex. P-1. Defendant No.1 is the successor of M/s CALTEX (India) Limited and accepted the relationship of landlord and tenant vis-à-vis the Plaintiff and itself. The land in question was owned by the Plaintiff’s grandfather, Mr. Shadi Lal Bhatia and after his death Smt. Rajeshwari Bhatia became the landlady. The lease was extended by a lease deed dated 15th October, 1970. Smt. Bhatia died on 22nd November 1993. During her lifetime she executed a Will dated 5th June 1989 bequeathing the land in question to the Plaintiff. The Plaintiff has also obtained probate/letter of administration of the said Will. This fact was also admitted by the Defendant in its written statement. The probate certificate has been placed on record. Defendant No.1 started remitting the rent to the Plaintiff separately through his attorney Mr.Vipin Arora. The Rent in respect of adjoining land was being paid by Defendant No.1 separately to the other legal heirs of the deceased Smt. Rajeshwari Bhatia.

5. Considering that Defendant No.1 has accepted the relationship of landlord and tenant and has been paying rent for the plot under its occupation to the Plaintiff, it is now not open to Defendant No.1 to deny the identity of plot which belongs to the Plaintiff.

6. In the written statement, Defendant No.1 claims that the lease is renewable for a period of 40 years beyond 31st March 2009. It appears that there is no automatic renewal of the lease. Defendant No.1 has not exercised any such right by issuing a notice to the Plaintiff. On the other hand,

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the Plaintiff has terminated the lease and filed the present suit for recovery of possession.”,

it was categorically observed vide paragraph 5 of the order dated 21.11.2013 in CS(OS) No.1828/2006 that taking into account that the defendant no.1 had accepted the relationship of landlord and tenant and had been paying rent for the plot under its occupation to the Plaintiff, **it was not open to the defendant no.1 to deny the identity of plot which belong to the plaintiff.**

9. The learned Single Judge of this Court vide order dated 21.11.2013 in CS(OS) No.1828/2006 also held to the effect that the statement made in paragraph 9 of the written statement that the lease came to an end on 31st March 2009 was an admission by Defendant No. 1 that its continuance in the suit property beyond that date is without any legal basis with there being observations also in the order dated 21.11.2013 to the effect that there was no automatic renewal of the lease and the defendant no.1 had not exercised any such right earlier by issuing any notice to the plaintiff and that as held by the Hon'ble Supreme Court in ***“Bharat Petroleum Corporation Limited v. Rama Chandrashekhar Vaidya”***, a decision dated 2nd April 2013 in SLP (Civil) No. 15 of 2010, the Hon'ble Supreme Court had negatived the plea in that case by Defendant No. 1 thereof that there was an automatic renewal of the lease, likewise, in ***“Depot Superintendent, H.P. Corporation Limited v. Kolhapur Agricultural Market Committee, Kolhapur” (2007) 6 SCC 159***, the Supreme Court had held that there was no automatic renewal of a lease for a petroleum retail outlet and thus, it was held that the plaintiff was entitled under

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Order XII Rule 6 of the Code of Civil Procedure, 1908 to a decree of possession on the basis of the admissions made in the written statement of the defendant no.1 and the suit was thus, decreed in terms of the prayer clause (a) with the defendant no.1 having been directed to restore to the plaintiff the vacant and peaceful possession of the suit property as shown in red in the site plan annexed with the plaint which was under the occupation of the defendants within a period of 12 weeks from the date of the order dated 21.11.2013 with it having been directed that the suit CS(OS) No.1828/2006 would continue as regards the remaining prayers.

10. Vide judgment dated 05.02.2014 in RFA(OS) No.36/2014, the appeal filed by the defendant no.1 i.e. the present appellant against the order dated 21.11.2013 passed in relation to I.A.16435/2010 was dismissed by the Hon'ble Division Bench. There are observations in the judgment dated 05.02.2014 by the Hon'ble Division Bench of this Court vide paragraphs 9, 10, 11, 14 & 16 to the effect:-

“9. Aforesaid facts are not disputed by the appellant. The defence of the appellant is that by and under a memorandum of family settlement Ex.PW-1/X, Ajay Bhatia, Anil Bhatia, Renu Bhatia w/o Ashok Bhatia and Anuradha have acknowledged that in the will executed by Rajeshwari Bhatia, there is a typing error in that property No.4/4 was actually intended to be willed to Ajay Bhatia in respect whereof it is the case of Ajay Bhatia that the said family settlement was never acted upon.

10. Now, Ex.P-4 being a letter dated August 17, 2005 written by the appellant to Ajay Bhatia tenders a sum of Rs.54,000/- (Rupees Fifty Four Thousand Only)

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towards rent for Tej Service Station for the period July 2005 to June 2006.

11. The letter is an admission by the appellant that Ajay Bhatia is its landlord pertaining to the property wherefrom Tej Service Station is operational and that monthly rent is Rs.4,500/- (Rupees four thousand Five hundred only). The monthly rent would be as aforementioned because the rent tendered vide Ex.P-4 is for twelve months and $4500 \times 12 = 54000/-$.

.....

.....

14. It is settled law that a decree on an admission can be passed even on an admission contained in a document.

16. The lease period is admittedly over even as per the case set up by the appellant. Landlord tenant relationship is established. Rent being more than Rs.3,500/- (Rupees three thousand five hundred only) per month is established. In Delhi, properties on rent where the rent is more than Rs.3,500/- (Rupees three thousand Ove hundred only) per month do not have the protection of the rent law. Thus, ejectment had to follow, leaving the issue of mesne profits to be decided with reference to Ajay Bhatia plea that the tenancy stood determined much prior."

11. An application bearing Execution Petition No. 163/2014 in CS (OS) No. 1828 of 2006 under Section 51 read with Order XXI Rule 35 and Section 151 of the Code of Civil Procedure, 1908 was filed by the DH before this Court dated 29.04.2014 seeking that the JD be directed to comply with the order dated 21.11.2013 by issuance of warrants of attachment directing the judgment debtor to handover the peaceful vacant possession of land as mentioned in the plan attached with the decree shown in red and by directing the judgment debtor to remove

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the machinery and equipment installed by them in the said land with costs of this execution application.

12. An application bearing E.A.No.799/2014 in Execution Petition No.163/2014 was filed by the DH seeking restoration of the entire suit property that had been let out to the defendant no.1 seeking further that the directions be issued to the JD to remove, dismantle and demolish the construction or to hand over the possession and close the petrol pump being run thereon in the interest of justice.

13. Another application dated 25.07.2017 was indicated to have been filed by the JD seeking to the effect:-

“(a) The Hon'ble Court may be pleased to appoint a revenue officer, preferably, kanoongo of the concerned area as local commissioner and direct him to accurately demarcate the area of the suit property, that is,, the plot no.4/4, Azad Pur, G.T. Road, Delhi, with reference to such revenue or other survey records of the area and all other relevant documents; and

(b) The Hon'ble Court may also direct that the attachment done under the process of execution on plot no. 4/5, G.T. Road, Azad Pur under kharsa no. 403/90, and the adjacent plot leased by L & Building Department Delhi under Khasra no. 66, be removed and the full area of the said plot, on which Tej Service Station is being run, be restored to the Judgment Debtor forthwith; and

(c) The Hon'ble Court may direct that till the determination of the precise area, location and situation of the plot no. 4/4, Azad Pur, G.T. Road, Delhi, the execution proceedings referred to above may be kept in abeyance.”

14. The contention raised at the time of the consideration of the said applications on behalf of the JD was to the effect that the property let out to M/s Caltex (India) Ltd. vide an indenture of lease deed dated

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15.10.1970 was in respect of 9700 sq. ft. but that the site plan filed was in relation to property bearing no.4/5, which was also leased out to the JD by the predecessor of the plaintiff vide a separate lease deed executed in the year 1992 and that the JD submitted that the decree sought to be executed was in respect of a different property and not the suit property and the JD filed its own site plan during the course of the arguments and it was submitted that the area that had been taken over by the bailiff fell in property bearing no.4/5, Azad Pur, G.T. Karnal Road, Delhi.

15. Vide the impugned order dated 15.03.2019, the learned Trial Court vide paragraphs 5, 6 & 7 held to the effect:-

*“5. I have gone through the site plan filed with the execution petition forming part of the decree. The suit property shown in this site plan is adjacent to the Mandi Gate which is a clear point of identification of the suit property. I have also perused the site plan filed by the JD. The DH wants execution as per the site plan filed with the plaint and forming part of the decree. The JD on the other hand is now challenging the correctness of the said site plan. It is pertinent to note that the present objections have been filed not by a third party but by the JD himself who is stating that the possession of a separate property is being obtained by the DH on the basis of an incorrect site plan. The correctness of the site plan filed with the plaint (forming part of the decree) seems to have never been challenged by the JD during the trial. The JD is admittedly a tenant in respect of the two sites. **The case now set-fourth by the JD is that the site plan that was filed with the plaint was in respect of the other property that was leased out to JD vide a separate lease deed of 1992. If this was the situation, it was all the more a reason that the JD ought to have challenged the correctness of site plan in the suit itself. In case the***

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decree was passed and the JD was aggrieved on the ground the decree was in respect of another property (as now alleged), the JD had every right & opportunity to challenge the decree on this separate ground. Since the decree has been upheld by the Appellate Court and has attained finality, the JD cannot be permitted to go beyond the decree. At the same time, this Court can also not go beyond such a decree. There is no ambiguity in the site plan which is part of the decree. The suit property can be identified on the basis of the site plan and possession thereof can be taken. The challenge as to the correctness of the site plan is sham and no case can be made out by the JD to hold any kind of inquiry. In these circumstances, the objections deserve dismissal. The objections are accordingly dismissed. The second application of JD for restoration of possession under part execution of the decree is also dismissed.

6. With regard to the application of the DH for possession of remaining part and removal of plant, machinery etc., Ld. Counsel for DH argued that the JD has been running a petrol pump on the suit property. There are tanks filled with petroleum on the site. In addition, there are other plants and machinery including ATM etc. on the site. The petroleum products are highly inflammable products that can not be handled either by the bailiff or by the DH. Directions have been sought against the JD to restore the possession of the remaining land after removal and dismantling of plant and machinery.

7. As per the decree, JD was directed to restore to the DH the vacant and peaceful possession of the suit property within 12 weeks. It implies that the JD was under duty to remove the plant and machinery installed on the premises. The petroleum products are certainly inflammable and hazardous items and ought to be dealt with by experts. The JD is under express direction given in the decree itself to hand over the vacant possession

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and thereby under implied directions to remove the plant and machinery. Under Section 51 (e) of the CPC, this Court can execute the decree in such other manner as the nature of the relief granted may require. In the given facts and circumstances, before resorting to coercive measures, this Court deems it appropriate to give a fair time to the JD to remove the entire plant and machinery. Accordingly, JD is directed to remove the entire plant and machinery 'including underground tanks, petroleum, diesel etc, from the suit property within a period of four weeks from today. With these directions, the application of DH is allowed.'",

thus, *inter alia* observing to the effect that the site plan filed with the plaint forming part of the decree seems to have never been challenged by the JD during trial with it having been observed also to the effect that if the JD was aggrieved on the ground of the decree being in respect of another property as alleged, the JD had every right and opportunity to challenge the decree on this separate ground and since the said decree had been upheld by the Appellate Court which had attained finality the JD cannot be permitted to go beyond the decree and that the Trial Court also could not go beyond the decree with it having been observed by the learned Trial Court that the challenge to the correctness of the site plan was sham and no case could be made out by the JD to hold any kind of inquiry.

16. Vide order dated 19.07.2019 impugned in EX.F.A.30/2019, the application under Order XXI Rule 26 of the Code of Civil Procedure, 1908 filed by the JD seeking stay of the execution of the decree dated 20.08.2018 in CS 75297/2016 was dismissed with it having been *inter alia* observed vide the impugned order dated 19.07.2019 to the effect:-

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“Having heard both the sides, it is an admitted position by the JD that the suit property no. 4/4 was not taken possession of on 15.09.2014. The present execution petition relates to only the mesne profit qua the suit property no. 4/4. Even it is assumed that the argument of the JD is correct to the effect that instead of taking possession of this property no. 4/4, bailiff took possession of another property no. 4/5, the JD is liable to pay mesne profit at the awarded rate till the time possession of property no. 4/4 is handed over. The JD may frame other appropriate remedies for alleged taking possession of wrong property but the JD cannot refuse to pay mesne profit qua property no. 4/4 till its possession is handed over. Admittedly, possession of property no. 4/4 has not yet been handed over.

Therefore, the objections as well as application U/o 21 Rule 26 Code of Civil Procedure, 1908 both are liable to be dismissed and are hereby dismissed.”

17. The appellant vide the submissions made in EX.F.A.13/2019 submits that the respondent had malafidely attempted to take possession of a wrong plot bearing No.4/5, Azad Pur, G.T. Karnal Road, Delhi and that the appellant had filed the application/objections bearing E.A.686/2014 under Order XXI Rule 97 of the Code of Civil Procedure, 1908 r/w Section 151 of the Code of Civil Procedure, 1908 before this Court in Execution Petition No.163/2014 praying *inter alia* that the judgment and decree dated 21.11.2013 be not executed against property bearing No. 4/5, Azad Pur, G.T. Karnal Road, Delhi presently in possession of the appellant in its independent right but that despite the pendency of that application, the respondent on 15.09.2014 had wrongfully taken forcible possession of the adjacent plot at 4/5, Azad Pur, G.T. Karnal Road, Delhi through the bailiff appointed by the Executing Court, whereafter, the appellant had filed

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another Ex. App.(OS) No.750/2014 under Section 151 of the Code of Civil Procedure, 1908 seeking directions to restore possession of part of the property 4/5, Azad Pur, G.T. Karnal Road, Delhi to the appellant which had been wrongly taken possession of. The appellant submitted that the respondent had also filed the Ex. App. No.799/2014 under Order XXI Rule 97 r/w Section 151 of the Code of Civil Procedure, 1908 seeking possession of the entire land with further directions to the appellant/ JD to remove, dismantle and demolish the construction, which had been raised and asked them to hand over the entire possession and close the petrol pump and that the respondent had filed the wrong site plan with its suit which had been denied by the appellant in its written statement based on which the judgment and decree dated 21.11.2013 was passed and it had been submitted by the appellant that there was thus an error apparent of the face of the judgment and decree and the applicant/appellant had thus on 01.05.2015 filed an application under Order 41 Rule 33 r/w Section 151 of the Code of Civil Procedure, 1908 for clarification/rectification in the order dated 21.11.2013 but vide order dated 15.05.2015, this Court had observed to the effect that the application had to be filed within a period of 30 days and the said 30 days had lapsed and the application was filed after an year.

18. The observations in the order dated 15.05.2015 of the Hon'ble Division Bench in relation to CM. No.8491/2015 qua RFA(OS) 36/2014 are to the effect:-

“1. A perusal of the application would reveal that masquerading as an application seeking modification of

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the order dated February 05, 2015 (apparently relates to order dated February 05, 2014) review of said order is sought.

2. Limitation for seeking review of a decision is 30 days as per the Code of Civil Procedure. By the time the application was filed 30 days had lapsed. In fact the application is filed after more than a year late.

3. We dismiss the application.

4. No costs.”.

19. The appellant had submitted that since the respondent had fraudulently taken possession of a part of the wrong plot bearing No. 4/5, Azad Pur, G.T. Karnal Road, Delhi, the dealer of the said plot running a petrol pump in the name of Tej Service Station had also filed an application under Order 21 Rule 99 r/w Section 151 of the Code of Civil Procedure, 1908 seeking *inter alia* appointment of a Local Commissioner to direct him to accurately demark the area of the suit property but that vide order dated 21.03.2017, the Joint Registrar of this Court had transferred the pending Execution Petition No.163/2014 to the District & Sessions Judge, North District, Rohini.

20. The appellant had submitted that it had also filed an application on 22.07.2017 before the learned ADJ, Rohini Courts, Delhi to implead Land & Building Department, Delhi Administration as a party/respondent to the execution petition and that on 25.07.2017, the appellant had filed another application before the ADJ, Delhi praying *inter alia* to appoint a revenue officer of the area and to request him to accurately demarcate the area of the suit property situated at 4/5, Azad Pur, G.T. Karnal Road, Delhi and that the full area of the said plot on which the Tej Service Station was being run, be restored to the JD.

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21. The appellant submits that it is aggrieved by the order dated 15.03.2019 of the learned ADJ, District Court, Rohini, Delhi on the grounds that in the instant case, the respondent/plaintiff had not filed the map of the suit property giving the details of its location/boundaries and had rather given a hand written site plan and submitted thus, that Order 7 Rule 3 of CPC which required that where the subject-matter of the suit was immovable property, the plaint shall contain a description of the property sufficient to identify it and that in the instant case, the plaintiff had not filed the map of the suit property giving the details of its location/boundaries and had rather given a hand written site plan.

22. Reliance is sought to be placed on behalf of the appellant on the provisions of Section 47 of the Code of Civil Procedure, 1908, which read to the effect:-

“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”,

submitting further to the effect that the said section confers wide powers on the executing court, wherein the executing court has power to determine all questions arising between the parties to the suit in which the decree has been passed.

23. Reliance is also sought to be placed on behalf of the appellant on the observations of the Hon’ble Supreme Court in ***“Pratibha Singh and Anr. V. Shanti Devi Prasad and Anr.” (2003) 2 SCC 330***, wherein it has been observed to the effect:-

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“When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful Appellant should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC, 1908.”

24. The appellant submitted further to the effect that the learned ADJ had failed to consider that the Respondent had obtained the decree to take the possession of the property 4/4 Azadpur, Delhi which was given on lease by lease deed dated 15.10.1970 whereas in the execution petition, he had filed the execution by relying upon a hand made site plan and was then seeking to take the possession of the land 4/5, Azadpur, wherein Tej Service Station was situated, which was partly owned by third parties who were not the parties to the dispute viz., part of the land 4/5, Azadpur, Delhi belongs to Land and

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Building Department, Govt of NCT Delhi and part belongs to Mr. Anil Bhatia & Ors.

25. The appellant has further submitted that the learned Trial Court has committed an error in holding that there is no ambiguity in the site plan which is annexed with the plaint and failed to consider that the site plan filed by the Appellant was the actual site plan which is the part of the registered sale deed and it is different from the one Respondent had filed with the plaint. The appellant has submitted further that the learned ADJ failed to consider that even the mutation certificate filed by the Respondent along with its plaint also demonstrated that the suit property was the land bearing No.4/4, Azadpur, G.T.Road, Delhi which was leased out to Caltex (India) Ltd, wherein Azadpur Service Station was operating and the said land got mutated in favour of the Respondent/Decree holder.

26. The appellant has further submitted that the learned Trial Court had erred in holding that the Appellant had not challenged the correctness of the site plan in the suit itself and had failed to consider that the appellant had raised the objection in the written statement that the site plan annexed with the plaint was not correct and did not relate to the suit property. *Inter alia* it has been submitted by the appellant that in any event, the Executing Court cannot grant possession of land which does not belongs to the Decree Holder.

27. The appellant has further submitted that the learned Trial Court had failed to consider that the area of the land for which the suit was filed was admeasuring 9700 sq.ft. whereas the area of land on which "Tej Service Station" was located is 254' X 60' and that the respondent

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could only claim possession in respect of property bearing No. 4/4, Azadpur, G.T.Road, Delhi and nothing else and was mischievously claiming possession qua property bearing No. 4/5, Azadpur, G.T.Road, Delhi relying on a hand made site plan and that the JD cannot be compelled to give possession of the premises to a person who is not the owner/landlord of the land bearing No. 4/5, Azadpur, G.T.Road, Delhi and that the plaintiff is not the owner of property at 4/5 and that the appellant corporation had always been ready to hand over the possession of property at 4/4 Azadpur, Delhi in respect of which a decree had already been passed and attained finality.

28. The appellant has further submitted that the site plan attached by the respondent/DH along with the plaint showed the suit property in red as a mere sketch and did not reflect the location of the suit property in relation to the structure or landmarks in its immediate vicinity with any degree of accuracy. The appellant has further submitted that the learned Executing Court had passed the impugned order, adjudicated upon under Order XXI Rule 98, the application filed under Order XXI Rule 97, and that thus this Court has the jurisdiction to entertain this appeal under Order XXI Rule 103 and to grant relief as prayed.

29. Vide order dated 02.04.2019 and in view of the submissions that were made on behalf of the petitioner, it was considered essential that the plaint and the written statement filed thereto in the original suit and the replication thereto be placed on the record by the petitioner and documents, if any, that were sought to be filed by either side, were also directed to be filed with an affidavit.

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30. On behalf of the appellant, the copies of the written statement filed on behalf of the appellant in CS(OS)1828/2006, the copy of the replication filed on behalf of the plaintiff thereto, the copy of the evidence by way of affidavit of Mr.Ajay Bhatia and the copy of the statement of Sh.Ajay Bhatia recorded during trial, the copy of the decree in suit bearing No.CS(OS)1828/2006, the copy of the lease deed dated 09.02.1961 with a map, copy of the site plan, copy of the lease deed dated 15.10.1970 along with the copy of the eligible site plan of the property bearing No. 4/4, Azadpur, G.T.Road, Delhi & 4/5, Azadpur, G.T.Road, Delhi were submitted by the appellant on the record with an affidavit of Mr.Raj Kumar, General Manager of the appellant dated 04.04.2019.

31. Vide paragraph 3 of the written statement submitted by the appellant dated 23.11.2006, it was *inter alia* stated to the effect:-

“It is further submitted that the alleged site plan Annexure P-2 is also not correct. It does not relate to the property in suit.”

The plaintiff of the suit in reply on merits in paragraph 3 of the replication dated 09.02.2007 denied that the site plan was not correct.

32. The testimony of Ajay Bhatia recorded during the trial of CS(OS)1828/2006 has nowhere been controverted by the defendant to contend that the suit property i.e. 4/4, Azad Pur, G.T.Karnal Road, Delhi is not the property in suit, however it is observed that there was a query put to the plaintiff by the defendant in the plaint that the site plan filed by him is wrong and incorrect and not at all at G.T.Road which was denied however by the plaintiff.

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33. No written submissions are indicated to have been submitted by the respondents, though the respondent no.1 has placed on record the copies of documents vide an index dated 09.04.2019 in EX.F.A.13/2019 which includes the copy of an order of this Court dated 09.01.2019 in RFA 13/2019 against the judgment and decree dated 20.08.2018 whereby the suit of the plaintiff seeking mesne profits was decreed.

34. Significantly, RFA 13/2019 which relates to the grant of mesne profits in relation to the very same suit property for which the decree dated 21.11.2013 was passed, vide order dated 09.01.2019 in RFA 13/2019, the said appeal RFA 13/2019 was dismissed and it cannot be overlooked that in RFA 13/2019, there was not a whisper of an averment to the effect that the identity of the suit property was in any manner being disputed.

35. However, the respondent Shri Ajay Bhatia vehemently opposed the prayer made by the appellants in both EX.F.A.13/2019 & EX.F.A.30/2019 submitting to the effect that both the appeals are a gross misuse and abuse of the process of law with it having been submitted that it is not open to the appellants now to contend to the effect that there has been any mistaken identity depicted through the decree dated 21.11.2013 in CS(OS)1828/2006 nor in the decree dated 20.08.2018 in CS 75297/2016, thus, submitting to the effect that there is no infirmity whatsoever in the impugned order dated 15.03.2019 in Ex.No.290/2017 nor there is any infirmity in the impugned order dated 19.07.2019 in Ex.No.212/2019 whereby the executions of decrees dated 21.11.2013 and 20.08.2018 were respectively submitted.

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36. It is essential to observe that the decree dated 21.11.2013 has already been upheld by the Division Bench of this Court in RFA(OS)36/2014 vide order dated 05.02.2014. The order of the Hon'ble Division Bench of this Court dated 05.02.2014 in RFA(OS)36/2014 reads to the effect:-

“1. Vide impugned order dated November 21, 2013 IA No.16435/2010 filed by the respondent praying for a decree on admission has been passed although evidence was led for the reason CS(OS) NO.1828/2006 filed by the respondent against the appellant was defended by the appellant, amongst other on the plea that the lease pertaining to the suit property was valid till March 31, 2009.

2. This explains the learned Single Judge not referring to any document proved at the trial.

3. As regards the other prayer in the Suit for mesne profits the matter has been adjourned for further proceedings.

4. Respondent Ajay Bhatia is the grandson of Shadi Lal Bhatia. Two parcels of land were demised under two leases by Shadi Lal Bhatia in favour of M/s.CALTEX (INDIA) LTD. One land was referred to as situated at 4/4, Azad Pur, G.T.Road, Delhi and the other as 4/5, Azad Pur, G.T.Road, Delhi and we are informed that the numbers 4/4 and 4/5 referred to the milestone. 5. On the demised land 4/4, Azad Pur, G.T.Road, Delhi a petrol pump called M/s.Tej Service Station was made operational and from the other parcel of land a petrol pump by the name Azad Service Station was made operational.

6. CALTEX (INDIA) LTD. merged in M/s. Hindustan Petroleum Corporation Ltd.; the appellant.

7. On death of Shadi Lal Bhatia his wife Smt.Rajeshwari Bhatia inherited his estate which obviously included the

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two lands wherefrom two petrol pumps were in operation. Appellant attorned to her.

8. Rajeshwari Bhatia died on November 22, 1993. Ajay Bhatia propounded a will dated June 05, 1989 executed by Rajeshwari Bhatia as per which the petrol pump at 4/4, Azad Pur, G.T.Road known as Tej Service station was demised to him and the petrol pump at the other side was demised to Rajeshwari Bhatia's two sons named Anil and Ashok and her daughter Anuradha Kapoor. The will has been probated in Probate Case No.160/2001 and thus the decision operates in rem. The instrument of probate is Ex.P-2.

9. Aforesaid facts are not disputed by the appellant. The defence of the appellant is that by and under a memorandum of family settlement Ex.PW-1/X Ajay Bhatia, Anil Bhatia, Renu Bhatia w/o Ashok Bhatia and Anuradha have acknowledged that in the will executed by Rajeshwari Bhatia there is a typing error in that property No.4/4 was actually intended to be willed to Ashok Bhatia, Anil Bhatia and Anuradha and that property No.4/5 was intended to be willed to Ajay Bhatia in respect whereof it is the case of Ajay Bhatia that the said family settlement was never acted upon.

10. Now, Ex.P-4 being a letter dated August 17, 2005 written by the appellant to Ajay Bhatia tenders a sum of `54,000/- (Rupees fifty four thousand only) towards rent for Tej Service Station for the period July 2005 to June 2006.

11. The letter is an admission by the appellant that Ajay Bhatia is its landlord pertaining to the property wherefrom Tej Service Station is operational and that monthly rent is `4,500/-(Rupees four thousand five hundred only). The monthly rent would be as aforesaid because the rent tendered vide Ex.P-4 is for twelve months and $4500 \times 12 = 54000/-$.

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12. Thus, the learned Single Judge has arrived at the correct conclusion, but unfortunately by over simplifying the issue.

13. We have noted the plea of the appellant and have discussed it with reference to the rival pleadings and the admitted documents.

14. It is settled law that a decree on an admission can be passed even on an admission contained in a document.

15. But, in the instant case, since parties have led evidence, we would have expected the learned Single Judge to have discussed the evidence and had it been so done, Ex.P-4 by itself would have concluded the issue.

16. The lease period is admittedly over even as per the case set up by the appellant. Landlord tenant relationship is established. Rent being more than `3,500/- (Rupees three thousand five hundred only) per month is established. In Delhi, properties on rent where the rent is more than `3,500/- (Rupees three thousand five hundred only) per month do not have the protection of the rent law. Thus, ejectment had to follow, leaving the issue of mesne profits to be decided with reference to Ajay Bhatia's plea that the tenancy stood determined much prior.

17. The appeal is dismissed in limine but without any order as to costs."

37. Even the application CM. No.8491/2015 filed by the appellant herein seeking modification of order dated 05.02.2014 was dismissed vide order dated 15.05.2015 in RFA(OS)36/2014 as adverted to elsewhere hereinabove observing to the effect that a perusal of the application would reveal that it was masquerading as an application seeking modification of the order dated 05.02.2014 of which a review was being sought, which application for review was held to be barred

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by time beyond the period of 30 days and had been filed after more than an year and the said application was dismissed.

38. Undoubtedly, the appellant placed reliance on Section 47 of the CPC already adverted to hereinabove to contend to the effect that there can be re-agitation of the issue of the identity of the plot in question.

39. In as much as, placed on record is the order dated 09.01.2019 in RFA 13/2019 of this Court wherein, the appellant has challenged the decree dated 20.08.2018 in CS 75297/2016, which decree relates to the grant of mesne profits at the rate of Rs.50,000/- per month from July 2003 till the vacation of the suit property by the defendant nos. 1 & 2 in favour of the plaintiff and against the defendant nos. 1 & 2 which relates back to the relief of possession in relation to the very same suit property having been decreed under Order XII Rule 6 of the CPC on 21.11.2013 in relation to which EX.F.A.13/2019 was filed and challenging which the RFA(OS)36/2014 had also been dismissed, the factum that in RFA 13/2019 assailing the decree dated 20.08.2018 in relation to mesne profits, the appellant did not challenge the mesne profits as having been awarded in relation to some other property i.e. 4/5, Azad Pur, G.T.Karnal Road, Delhi and not in relation to suit property i.e. 4/4, Azad Pur, G.T.Karnal Road, Delhi with the said appeal EX.F.A.13/2019 having also been allowed only to the extent that the mesne profits were directed to be payable from 01.03.2006 and not from July 2003 with the rest of the judgment dated 20.08.2018 being upheld, it is apparent that the appellant cannot now urge and contend that the decrees in CS(OS)1828/2006 and CS 75297/2016

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related to any other property other than the suit property described in CS(OS) 1828/2006..

40. Significantly, there is nothing to indicate that the appellants have contended that the decree dated 21.11.2013 has in any manner been passed because of any fraud played before the Court by the respondent. **The issue of identification of the suit property was not raised during the appeal against the decree dated 21.11.2013 despite the conclusion drawn in para 5 thereof as already adverted to in para 9 hereinabove and it is only in the execution proceedings that this objection was raised by the defendant / appellant by filing objections under Section 47 of the CPC which brings forth the ill intention of the defendants to prolong the execution proceedings despite RFA(OS) 36/2014 having been dismissed.**

41. Furthermore, it cannot be overlooked that the Executing Court cannot go beyond the decree and has to execute the decree as it is and the legality or validity of the decree cannot be the subject matter of discussion before an Executing Court and that the Executing Court can refuse to execute a decree only when the decree is null and void due to lack of jurisdiction but the same is certainly not the case here.

42. Significantly, though the appellant in the written statement to CS(OS)1828/2006 did raise an issue in relation to the correctness of the site plan, no substantial arguments in relation thereto were addressed at the time when the decree under Order XII Rule 6 of the CPC was passed on 21.11.2013 nor in RFA(OS)36/2014 nor was there any such contention raised in RFA 13/2019 rather in the testimony of

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Mr.Vipin Arora examined as PW-2 in CS(OS)1828/2006, there is no challenge to the aspect of the property in suit bearing No.4/4, Azad Pur, G.T.Karnal Road, Delhi. The sale deed dated 20.07.1962, certified copy of which has been filed by the DH i.e. the respondent herein in relation to property having area 866 2/3 sq. yds. which measures in the East Side 100 Ft. and in WEST 100 ft. and in North 78 ft. in South 78 FT. situated at G.T. Road Azadpur, in boundaries of Municipal Corporation, Delhi and is bounded as under;. EAST ; Land of PWD and some part of G.T. Road WEST : Ram Dass Garden NORTH: Land of seller occupied by tenant Northern Transport Company SOUTH : Kaccha Way and some land of seller in which there is Burmah Shell Petrol Pump and on the said land building was constructed and there was petrol pump of Caltex India Ltd. and under him occupying the land in a capacity of a tenant, which property was sold to Chaman Lal Bhatia S/o Chaudhary Lal Chand great great grandfather of Ajay Bhatia, the DH i.e. the respondent to EX.F.A.13/2019 & EX.F.A.30/2019 with it having been specified therein that the khatoni number of the sold residential was 113 Khasra no.403/90, **near Meal No.4/4, G.T. Road, Azadpur, Delhi**, in as much as, the application seeking modification of the judgment in RFA(OS)36/2014 was dismissed vide order dated 15.05.2015 with it having been held that it was in fact masquerading as an application seeking modification of the order dated 05.02.2014 which was also dismissed in RFA(OS)36/2014, it is apparent that it is not open to the appellant herein to seek any modification of the said judgment dated 21.11.2013 in CS(OS)1828/2006 which judgment was upheld vide

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order dated 05.02.2014 in RFA(OS)36/2014 and the application seeking modification of which was dismissed vide order dated 15.05.2015 in RFA(OS)36/2014.

43. In view thereof, there is no infirmity whatsoever in the impugned orders dated 15.03.2019 & 19.07.2019 and thus, the EX.F.A.13/2019 & EX.F.A.30/2019 are both dismissed.

44. The interim restraint granted vide order dated 11.04.2019 in EX.F.A.13/2019 staying the execution proceedings is thus, withdrawn.

NOVEMBER 24th, 2021

'नेहा चौधरी'

ANU MALHOTRA, J.



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