



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

% *Date of decision: 29th April, 2022*

+ RFA 167/2022, CM APPLs. 19608/2022 & 19609/2022

RISHI RATHI

..... Appellant

Through: Mr. Medhanshu Tripathi, Adv. with
Mr. S. Rana, Adv.

versus

MS. PARMINDER KAUR KHURANA

..... Respondent

Through: Mr. Ankur Sood, Adv. with
Ms. Romila Mandal, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM APPL. No. 19608/2022

For the reasons stated in the application, the same is allowed and the documents being legal notice dated January 14, 2008, and written agreement to sell dated February 02, 2010, are taken on record.

The application is disposed of.

RFA 167/2022

1. This appeal has been filed by the appellant against the judgment / decree dated December 23, 2021, whereby the Trial Court has granted the possession of flat bearing No.1230/D-1, Vasant Kunj, New Delhi-110070 (for short, 'suit property') in favour of the respondent herein in an application under Order XII Rule 6 of the Code of Civil Procedure,



1908 (for short, 'CPC') filed by the respondent/plaintiff (hereinafter referred as 'respondent').

2. The facts as noted from the record are that the respondent has filed a suit for recovery of possession, arrears of rent, damages for use of occupation, and for permanent and mandatory injunction against the appellant/defendant (hereinafter referred as 'appellant'). The case of the respondent in the suit was that the property was originally owned by her father, Late Sardar Sujan Singh, who died on February 08, 2007, leaving behind a registered Will dated August 18, 1998, bequeathing the suit property in favour of the respondent, thereby making her lawful and absolute owner of the same.

3. It was also the case of the respondent that the appellant was inducted as a tenant in the suit property by the father during his lifetime vide lease deed agreement dated January 15, 2007, on a monthly rent of ₹12,000/-. The said lease was to remain valid up till January 14, 2010. Pursuant to the death of her father, a fresh Lease Agreement was executed between the appellant and the respondent's mother Smt. Rajender Kaur on November 06, 2007, on the same terms and conditions as the Lease dated January 15, 2007.

4. It was also the case of the respondent that in the year 2008 her title in the suit property came under challenge and the registered Will left behind by her father came under dispute. This led to the institution of the suit for partition before this Court, being CS (OS) No.1515/2008. During the pendency of the aforesaid suit, the mother of the respondent had expired on October 18, 2013. The appellant taking undue advantage of aforesaid development did not tender rent. Finally, the suit for



partition was disposed of by this Court vide order dated February 03, 2020, confirming the title of the respondent in the suit property.

5. It was the case of the respondent that she served a notice for eviction on the appellant on March 17, 2020, whereby she terminated the monthly tenancy of the appellant w.e.f. midnight of April 30, 2020, and called upon him to deliver the vacant and peaceful possession of the suit property and further called upon him to pay outstanding rent along with penalty as applicable without any further delay. No reply has been received from the appellant despite the service of the said notice, as a result of which, the respondent served him with another notice on May 25, 2020.

6. Finally, as the appellant has failed to vacate the suit property, the respondent filed the suit. The case of the appellant, in the written statement, was that the claim of the respondent in the suit was based upon a forged and fabricated Will. The Authenticity of the said Will, purportedly executed by the respondent's father was challenged by the respondent's mother Late Rajender Kaur before the DDA and an inquiry is pending therein.

7. It was also the case of the appellant that the suit is liable to be dismissed for non-joinder of DDA as a party. Further, the respondent is trying to usurp the suit property through forged and fabricated documents since the year 2007-2008 soon after the death of her father. There are number of communications of the mother of the respondent with DDA wherein, she had alleged that her own daughter, i.e., the respondent is trying to illegally grab the property through the forged Will of her late husband. She requested the DDA to make an inquiry



about the said forgery and not to transfer the suit property in the name of the respondent.

8. It is also stated that the appellant took the suit property from Late Sujan Singh, father of the respondent on rent in the year 2007. As Late Sujan Singh was too old to execute any agreement, it was his wife Rajinder Kaur who executed the rent agreement. After the death of Sujan Singh in the year 2007, the wife of Sujan Singh executed a fresh rent agreement. Subsequently, the appellant proposed to Rajinder Kaur to sell the suit property to him for which, she agreed and part of the sale consideration was given to her. Now his status has changed from tenant to purchaser.

9. It was further stated that the appellant after purchasing the suit property, had invested huge amount in its renovation and he has given the suit property on rent to one Ms. Manisha. It was further stated that when the appellant approached DDA, it was revealed to him that the respondent is trying to usurp the suit property through the forged and fabricated Will of her father. The said fact was disclosed to the mother of the respondent.

10. The submissions of Mr. Medhanshu Tripathi learned counsel for the appellant are primarily the same as were made before the Trial Court. He stated that Late Rajender Kaur had agreed to sell the suit property to the appellant on sale consideration fixed at ₹78 Lacs to her in the first week of January 2008 and pursuant thereto the appellant had paid ₹8 Lacs through cheque No.650817 drawn on Bank of Baroda. Similarly, an amount of ₹6 Lacs was paid in cash on December 28, 2009, followed by a further amount of ₹9,50,000/- in cash on January



06, 2010. In other words, the appellant had paid an amount of ₹32,50,000/- towards advance money to the seller Late Rajender Kaur. It was also agreed that the purchaser shall pay the balance amount of ₹45 Lacs at the time of registration of the sale deed.

11. According to him, the reliance placed on the order passed by this Court in the suit for partition so relied upon by the respondent cannot bind the appellant as neither he nor the DDA was made a party in the suit. That apart, he stated that the respondent had terminated the tenancy through a legal notice issued on January 14, 2008, and the suit having been filed after a gap of 12 years is hit by limitation and also the appellant has claimed the property through adverse possession.

12. He stated that in the light of Article 67 of the Limitation Act, 1963 if the landlord neither accepts the tenancy nor the rent then it is clear that the tenancy expires and limitation begins to run against the landlord and his right to obtain possession from his tenant would be barred after 12 years, as the appellant was in hostile possession of the suit property.

13. He submits, in any case, that the Trial Court could not have decided the application under Order XII Rule 6 of the CPC without serving the appellant a copy of the application and without giving an opportunity to the appellant to give a reply to the application. In other words, it is his submission that their being a triable issue, the prayer insofar as the possession, could not have been granted on an application under Order XII Rule 6 of the CPC. Mr. Tripathi has relied upon the following judgments in support of his submissions:



(i) ***Ravinder Kaur Grewal & Ors. vs. Manjit Kaur & Ors., (2019) 8 SCC 729***; and

(ii) ***S.M. Asif vs. Virender Kumar Bajaj, (2015) 9 SCC 287***.

14. On the other hand, Mr. Ankur Sood, learned counsel for the respondent contested the submissions made by the counsel for the appellant by stating that at no point of time, before the Trial Court, did the appellant referred to the legal notice dated January 14, 2008. It is for the first time that a reference has been made to the said legal notice and also filed in these proceedings as additional evidence.

15. That apart, he submits that the reliance placed by Mr. Tripathi on the agreement to sell dated February 02, 2010, is clearly an afterthought which is an unregistered deed not produced before the Trial Court and produced for the first time in this appeal. On the strength of the said legal notice, the respondent cannot justify the possession of the suit property. That apart, he stated that the respondent's right with regard to the suit property has been rightly decided by the Trial Court that the appellant cannot resist the possession granted by the Trial Court in favour of the respondent. It is his submission that the appellant had never taken the plea of adverse possession before the Trial Court. It is for the first time such a plea has been advanced which is also unsustainable in view of the fact that the case set up by the appellant is of the title of the suit property based on the agreement to sell which plea is mutually destructive to the plea of adverse possession. He justifies the order passed by the Trial Court by, stating that without prejudice even if the agreement to sell has been executed between the mother of



the respondent and the appellant then also the same shall not give any title or interest in the suit property in favour of the appellant.

16. That apart, he stated that the plea of Mr. Tripathi that a copy of the application under Order XII Rule 6 of the CPC was not given to the counsel is an incorrect submission. In this regard, he has relied upon the order dated October 09, 2021, of the Trial Court, which records a copy of the application under Order XII Rule 6 of the CPC was also sent to the learned counsel for the appellant at his email which fact was not disputed by the clerk of the counsel. The order also records that the arguments shall be heard on the next date of hearing, i.e., December 20, 2021. He also stated that the counsel for the appellant had argued the matter without demur and protest. He has relied upon the following judgments in support of his submissions:

- (i) ***Mohan Lal (deceased) through his Lrs. Kachru & Ors. vs. Mirza Abdul Gaffar & Anr., AIR 1996 SC 910;***
- (ii) ***Kewal Kishan vs. Delhi Development Authority, 2013 (137) DRJ 267;***
- (iii) ***M/S Jagdambey Builders Pvt. Ltd. vs. J.S. Vohra, AIR 2016 Delhi 203;***
- (iv) ***Umang Puri vs. Pramode Chandra Puri, 165 (2009) DLT 245; and***
- (v) ***Parivar Seva Sansthan vs. Dr. (Mrs.) Veena Kalra & Ors., AIR 2000 Delhi 349.***



17. He seeks the dismissal of the appeal.

18. Having heard the learned counsel for the parties, the short question which arises for consideration in this appeal is whether the Trial Court was justified in granting the decree of possession with regard to the suit property in favour of the respondent on an application under Order XII Rule 6 of the CPC.

19. At the outset, I may state here that the provision of Order XII Rule 6 of the CPC reads as under:

“6. Judgment on admissions-

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

20. The law with regard to the interpretation/scope of Order XII Rule 6 of the CPC is well settled in terms of the judgment of the Division Bench of this Court in the case of **Anupama Bansal vs. Suraj Bhan Bansal & Anr., RFA(OS) 46/2019**, wherein the Division Bench has in paragraphs 20 to 24 held as under:

“20. The law on the aspect as to what should constitute "pleadings or otherwise", the words used under Order XII Rule 6 CPC, for passing a judgment on admission, is well settled. There are a line of decisions rendered by the



Supreme Court and the High Courts that if there is sufficient material on record including express/implied admissions, that can validate passing of a decree on the basis of such admissions, there is no impediment for the Court to accelerate the suit proceedings to a closure by passing a decree on admitted claims.

21. The scope and ambit of Order XII Rule 6 CPC was discussed by the Supreme Court in the landmark case of Uttam Singh Duggal and Co. Ltd. Vs. Union Bank of India reported as AIR 2000 SC 2740, where it was observed as under:-

"12. As to the object of the Order 12 Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that „where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.“ We should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed." (emphasis added)

22. In ITDC Ltd. Vs. M/s. Chander Pal Sood and Son reported in 84 (2000) DLT 337 DB, a Division Bench of this Court interpreted the provisions of Order XII Rule 6 CPC in the following words:-



"17. Order 12 Rule 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing...."

23. Another Division Bench of this Court had the occasion to interpret the expression, 'otherwise' used in Order XII Rule 6 CPC in Rajiv Srivastava vs. Sanjiv Tuli and Anr. reported as 119 (2005) DLT 202 (DB) and observed as below:-

"10. The use of the expression „otherwise" in the aforesaid context came to be interpreted by the Court. Considering the expression the Court had interpreted the said word by stating that it permits the Court to pass judgment on the basis of the statement made by the parties not only on the pleadings but also de hors the pleadings i.e. either in any document or even in the statement recorded in the Court. If one of the parties" statement is recorded under Order 10 Rules 1 and 2 of the Code of Civil Procedure, the same is also a statement which elucidates matters in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in the statement recorded, would be conclusive against him and the Court can proceed to pass judgment on the basis of the admission made therein."



24. In *Delhi Jal Board vs. Surendra P. Malik* reported as 104 (2003) DLT 151, a Division Bench of this Court had laid down the following tests for pronouncing a judgment on admission:-

"9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment."

(emphasis added)

21. The Division Bench of this Court has also held, that it is not necessary that an application need to be filed by a party for seeking orders under Order XII Rule 6 of the CPC. The power can be exercised by the Court even *suo motu*. The relevant part of the order of the Division Bench of this Court in the case of ***Saranpal Kaur Anand vs. Praduman Singh Chandhok and Ors., RFA(OS) 54/2015***, reads as under:

"28. Even while dealing with an application under Order VII Rule 11 CPC, the Court can exercise power under order XII Rule 6 CPC to pass a judgment on admissions. A Division Bench of this Court in Keshav Chander Thakur(supra) held that though in an application under Order VII Rule 11 CPC only plaint and the documents filed



along with the plaint can be looked into however given the nature of pleadings and admitted documents, the Court was well within its jurisdiction to exercise power under Order XII Rule 6 CPC and pass a judgment suo motu. It was held:

"38. We concur with the view of the learned Single Judge. However, we may like to note that the learned Single Judge has exercised powers under Order VII Rule 11 CPC while rejecting the plaint. The scope of exercise of powers under Order VII Rule 11 CPC is limited by the contours of the provision. While exercising those powers what has to be seen is only the averments in the plaint and the documents filed along with the plaint. The defence as taken in the written statement is not to be gone into for the said purpose. To that extent, the judgment of the learned Single Judge may suffer from an infirmity. However, in our view given the nature of pleadings and admitted documents on record and the extensive arguments advanced by the parties on the issues discussed herein, this was a fit case for the Court to exercise powers under Order XII Rule 6 CPC where the Court has powers to suo moto pass a judgment. There is no requirement in Order XII Rule 6 CPC for filing of a formal application. The Court can on its own motion without any application by a party proceed to pass a decree on admissions as stated in Order XII Rule 6 CPC. Order XII Rule 6(i) CPC reads as follows:-

"6. Judgment on admissions.- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions."



In our view based on the pleadings and documents placed on record by the parties there are clear admissions of fact which warrant passing of the order of dismissal of the plaint."

(emphasis supplied)

22. Having said that in the case in hand, there is no dispute that the respondent had filed an application under Order XII Rule 6 of the CPC. A copy of the said application was also sent to the counsel for the appellant as noted in the order of the Trial Court dated October 09, 2021, which reads as under:

"CS 381/20

M/S PARMINDER KAUR KHURANA V. RISHI RATHI

File is taken up today as 20.08.2021 was declared holiday on account of Moharram.

09.10.2021

Present: Ms. Romila Mandal, counsel for the plaintiff, physically.

Sh. Vivek Pandey, clerk of the counsel for defendant, physically.

Clerk of the counsel for the defendant submits that main counsel's uncle has passed away yesterday evening, therefore, counsel has gone to Lucknow to attend the last rites of him.

Counsel for the plaintiff submits that she has moved an application under Order 12 Rule 6 CPC and copy of the



same already supplied to counsel for the defendant at his email address.

Heard.

In view of the aforesaid facts and circumstances, matter is fixed for arguments on application under Order 12 Rule 6 CPC & under Section 15-A CPC.

Put up on 20.12.2021 for arguments on pending applications.”

23. After that date, the matter stood adjourned to December 20, 2021. It is also stated by the counsel for the respondent and not disputed by the counsel for the appellant that he had also argued the matter before the Trial Court.

24. That apart, I note that the counsel for the parties had also filed their written submissions, which is clear from paragraph 7 of the impugned order. Hence, the plea of the counsel for the appellant that the appellant was not given an opportunity to file a reply to the application would be a misconceived argument as an opportunity was given to the counsel for the appellant to file written submissions. If that be so, the plea made cannot be a ground to interfere with the impugned order.

25. Insofar as the merit of the submission is concerned, learned counsel for the appellant has relied upon an agreement to sell executed on February 02, 2020, with Late Rajender Kaur to justify possession. He has also justified the possession on the basis of adverse possession. It may be stated here that the agreement to sell was not filed by the appellant before the Trial Court. This is clear from the fact that the



appellant herein has filed an application under Order XLI Rule 27 of the CPC read with Section 151 of the CPC for filing additional evidence / documents along with the present appeal. The two documents that the appellant intends to bring on record are the legal notice dated January 14, 2008, and the written agreement to sell dated February 02, 2010 (which I have allowed).

26. Having said that the question would be whether the appellant can rely upon the agreement to sell executed with Late Rajender Kaur with regard to the suit property. It must be held, the appellant cannot claim any right, title, or interest in this suit property nor can justify his possession.

27. This I say so, in view of the judgment of this Court in the case of ***M/S Jagdambey Builders (supra)*** which has also been referred to and relied upon by the Trial Court. In this regard, paragraphs 10 and 11 of the impugned order read as under:

*“10. It is admitted fact that defendant took the suit property on the rent in the year 2007 from late Sh. Sujan Singh, father of the plaintiff. After death of Sujan Singh, the said tenancy was extended by the mother of the plaintiff. The main contention of the counsel for the defendant is that since, defendant has purchased the suit property from the mother of the plaintiff vide Agreement to Sell therefore, now his status has changed from tenant to purchaser. It is to be note here that defendant, in support of the said claim has not filed the alleged agreement to sell on record. If it is presumed, for the sake of arguments that any Agreement to sell was executed between mother of the plaintiff and defendant even then, the defendant does not 'have any right, title or interest in the suit property in view of law laid down in case titled **M/s Jagdambey Builders Pvt. Ltd. Vs. J.S. Vohra, reported as AIR 2016 Delhi 203.** Hon'ble High Court has observed as under:*



"17. A mere agreement to sell of irnmovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondent/plaintiff is found to have agreed to sell the property let out to the appellant to the appellant the appellant/defendant would not get any right to occupy that property as an agreement purchaser. This Court in **Jiwan Das Vs. Narain Das** AIR 1981 Delhi 291 has held that in fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with the law and in pursuance thereto is executed. Thus in law, the appellant has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in her favour.

20. What follows is that even if the appellant/defendant were to succeed in his suit for specific performance of agreement to sell till the execution of a conveyance deed in pursuance to the decree, if any in favour of appellant, the appellant has no ground in law to save his possession of the premises. The status of the appellant would continue to be as before i.e. of a tenant whose tenancy has been determined."

(underlining mine)

11. Bare perusal of the law laid down in **M/s Jagdambey Builders case (Supra)**, it is apparent that mere Agreement to Sell of immovable property does not create any right in the property except the right to enforce the said agreement. Further, on the basis of the agreement, status of the defendant cannot be said to have changed from tenant to purchaser. Moreover, defendant has not placed the said alleged Agreement to Sell on record along with the written statement, therefore, it can be said that defendant has neither having any right, title or interest in the suit property nor his status has changed from tenant to purchaser."



28. Suffice to state, I agree with the conclusion arrived at by the Trial Court in this regard.

29. Additionally, it is also settled law with regard to the provision of Section 53A of the Transfer of Property Act, 1882 read with provisions of Section 17(1A) of the Registration Act, 1908 in terms of the judgment of this Court in the case of ***Joginder Tuli vs. State of NCT of Delhi & Ors., W.P.(CRL) 1006/2020***, wherein this Court has held that possession in part performance of the agreement to sell cannot be justified in the absence of the agreement to sell, being registered. The Court in paragraph 32 has held as under:-

“32. It is well settled that in order to give benefits of Section 53A of the Transfer of Property Act, the document relied upon must be a registered document. Any unregistered document cannot be looked into by the court and cannot be relied upon on or taken into evidence in view of Section 17(1A) read with Section 49 of the Registration Act. Thus, benefit of Section 53A could have been given to the respondent, if and only if the alleged Agreement to Sell cum receipt satisfied the provisions of Section 17(1) A of the Registration Act (Refer Arun Kumar Tandon v. Akash Telecom Pvt. Ltd. & Anr. MANU/DE/0545/2010).”

30. Now coming to the plea of adverse possession made by Mr.Tripathi. He has made the submission on the strength of legal notice dated January 14, 2008, whereby the respondent had terminated the tenancy which was twelve years before the filing of the suit in the year 2020, i.e., beyond the period of 12 years expiring the limitation period under Article 67 of the Limitation Act, 1963. On the other hand, Mr. Sood had stated that such a plea is not available to the appellant as he had not placed the said legal notice on record of the Trial Court and



even otherwise, the claim of the appellant was for title to the property on the strength of agreement to sell dated February 02, 2008, and such a plea is mutually destructive to the plea of adverse possession.

31. I agree with the submission made by Mr. Sood. He is right to say that the plea of adverse possession was not taken in the written statement.

32. That apart, the case of the appellant being that he is the owner/purchaser of the suit property on the strength of the agreement to sell dated February 02, 2010, he cannot take the plea of adverse possession, as such a plea is mutually destructive. The relevant averments in the written statement filed by the appellant are the following:

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4. *That the Defendant right in the property is not of a tenant but of a purchaser. He had entered into an Agreement to Sale with late Rajinder Kaur after paying hefty sum as part payment of the property. The day petitioner entered into agreement to sale with Late Rajinder Kaur his status as a tenant came to an end. He is as such the owner of the property. It is pertinent to mention here that section 54 of the Transfer of property Act defines “Sale” means transfer of property in exchange of consideration paid or promised to paid or partly paid and or partly promised to be paid. Defendant was handed over the possession of the property by late Rajinder Kaur not as a tenant but as the owner of the property after receiving the part consideration of the flat. (Gyatri Prasad Vs. Board of Revenue and other 1973 ALL LJ 412). It is further submitted that Defendant after purchasing and investing huge amount on renovation has further given the suit property on rent to one M/S Manisha.*



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33. Learned counsel for the respondent is justified in relying upon the judgment in the case of **Mohan Lal (deceased) through his Lrs. Kachru (supra)** wherein the Supreme Court in paragraphs 3 and 4 has held as under:

“3. The only question is whether the appellant is entitled to retain possession of the suit property. Two pleas have been raised by the appellant in defence. One is that having remained in possession from 8-3-1956, he has perfected his title by prescription. Secondly, he pleaded that he is entitled to retain his possession by operation of Section 53-A of the Transfer of Property Act, 1882 (for short ‘the Act’).

4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.” (emphasis supplied)

34. He is also justified in relying upon the judgment of the Coordinate Bench of this Court in the case of **Mrs. Adarsh Kaur Gill vs. Smt. Surjit Kaur Gill & Ors., FAO(OS) No.634/2009**, decided on January 15, 2009, referred to in **Keval Kishan (supra)** wherein paragraph 13 reads as under:



“13. The plea of ownership by way of adverse possession now sought to be taken is found to be mutually destructive to the plea of possession as co-owner, as a subrogee-mortgagee in possession and as a tenant. The Supreme Court in L.M. Aswathama Vs. P. Prakash MANU/SC/1222/2009 has also held that pleas based on title and adverse possession are mutually destructive; adverse possession does not begin to operate until title is renounced; unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period of prescription will not commence.”

35. Insofar as the judgment relied upon by Mr. Tripathi in the case of **S.M. Asif (supra)** is concerned, the same is in respect of the scope of Order XII Rule 6 of the CPC. The Supreme Court in paragraph 8 has held as under:

“8. The words in Order 12 Rule 6 CPC “may” and “make such order ...” show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.”

36. The Supreme Court has said that Order XII Rule 6 of the CPC is an enabling provision giving discretionary power to the Court to deliver the judgment on admission to the extent of the claim admitted by one of the parties of his opponent's claim. In the present case, the Trial Court has rightly exercised the discretion in favour of the respondent.



37. Insofar as the judgment in the case of **Ravinder Kaur Grewal & Ors.** (*supra*) is concerned, the paragraphs 42 and 51 on which Mr. Tripathi had relied upon, reads as under:

“42. It is also pertinent to mention that the decision of this Court in Gurdwara Sahib v. Gram Panchayat Village Sirthala [Gurdwara Sahib v. Gram Panchayat Village Sirthala, (2014) 1 SCC 669 : (2014) 1 SCC (Civ) 630] has been relied upon in State of Uttarakhand v. Mandir Sri Laxman Sidh Maharaj [State of Uttarakhand v. Mandir Sri Laxman Sidh Maharaj, (2017) 9 SCC 579 : (2017) 4 SCC (Civ) 671] . In the said case, no plea of adverse possession was taken nor issue was framed as such this Court held that in the absence of pleading, issue and evidence of adverse possession suit could not have been decreed on that basis. Given the aforesaid, it was not necessary to go into the question of whether the plaintiff could have taken the plea of adverse possession. Nonetheless, a passing observation has been made without any discussion of the aspect that the court below should have seen that declaration of ownership rights over the suit property could be granted to the plaintiff on strength of adverse possession (see Gurdwara Sahib v. Gram Panchayat Village Sirthala [Gurdwara Sahib v. Gram Panchayat Village Sirthala, (2014) 1 SCC 669 : (2014) 1 SCC (Civ) 630]). The Court observed : (Mandir Sri Laxman Sidh Maharaj case [State of Uttarakhand v. Mandir Sri Laxman Sidh Maharaj, (2017) 9 SCC 579 : (2017) 4 SCC (Civ) 671] , SCC p. 584, para 24)

“24. By no stretch of imagination, in our view, such a declaration of ownership over the suit property and right of easement over a well could be granted by the trial court in the plaintiff's favour because even the plaintiff did not claim title in the suit property on the strength of “adverse possession”. Neither were there any pleadings nor any issue much less evidence to prove the adverse possession on land and for grant of any easementary right over the well. The courts below should have seen that no declaration of ownership rights



over the suit property could be granted to the plaintiff on the strength of “adverse possession” (see Gurdwara Sahib v. Gram Panchayat Village Sirthala [Gurdwara Sahib v. Gram Panchayat Village Sirthala, (2014) 1 SCC 669 : (2014) 1 SCC (Civ) 630]). The courts below also should have seen that courts can grant only that relief which is claimed by the plaintiff in the plaint and such relief can be granted only on the pleadings but not beyond it. In other words, courts cannot travel beyond the pleadings for granting any relief. This principle is fully applied to the facts of this case against the plaintiff.”

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(emphasis supplied)

51. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation in Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.”

38. Suffice to state, the Supreme Court in the said case was referring to in what manner a person can seek a title to the property by virtue of adverse possession by referring to Article 65 of the Limitation Act, 1963 which does not define the concept of adverse possession but deals with limitation to sue and extinguishment of rights and further stating



that where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been disposed of by a forceful entry by the owner or by some other person his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for the requisite period against such a plaintiff. Such is not the case here.

39. The facts which falls for consideration in this case more so when the appellant has claimed a title to the property on the basis of an agreement to sell, cannot plead adverse possession in view of the law referred to above. The said judgment has no applicability in the facts of this case.

40. In view of my discussion above, I do not see any merit in the appeal, the same is dismissed.

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In view of my above conclusion in appeal, this application is also dismissed.

V. KAMESWAR RAO, J

APRIL 29, 2022/aky