



\$~65

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 92/2022, CM APPL. 35863/2022, CM APPL. 35864/2022
and CM APPL. 35865/2022

SHEIKH ABEDDIN Appellant
Through: Mr. Rajesh Kumar Chaurasia
and Mohd. Hasibuddin, Advs.

versus

IQBAL AHMED & ANR. Respondents
Through: Mr. Gaurv Singh and Ms. Vani
Raj Tripathi, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)
22.09.2022

%

1. Consequent to the dismissal, by the learned Additional District Judge (“the learned ADJ”), of RCA 65/2020, preferred by the appellant against the order dated 16th October 2020, passed by the learned Senior Civil Judge (“the learned SCJ”) in CS 50364/2016, instituted by the respondents against the appellant, the appellant has preferred this second appeal before this Court under Section 100 of the Code of Civil Procedure, 1908 (CPC).

2. CS 50364/2016, instituted by the respondents against the appellant, sought a mandatory injunction directing the appellant to vacate the plot at P-229, Khasra No. 431/260, Joga Bai Extension, Nafees Road, Batla House, Jamia Nagar, Okhla, New Delhi (“the suit property”) and to handover possession of the suit property to the



respondents, along with a decree for mesne profits.

3. The plaint asserted that Respondent 1, who was in possession of the suit property, whereon he had constructed two rooms and a boundary wall, had permitted the appellant to look after the suit property, on license basis, as a chowkidar/caretaker. Reliance was placed, in the plaint, on a mutual agreement dated 29th July 2009, which recognized the appellant to be the caretaker and licensee of the respondents. *Vide* notice dated 24th March 2014, Respondent 1 had revoked the license of the appellant and called upon him to vacate the suit property, but as the appellant failed to do so, respondents, *vide* the suit, sought eviction of the appellant from the suit property and restoration of possession of the suit property to the respondents, apart from *mesne* profits.

4. Consequent to issuance of summons in the suit, the appellant filed his written statement by way of response thereto. The appellant did not, in the written statement, lay any claim to ownership of the suit property. What was asserted, in the written statement, was that the appellant was in physical occupation of the suit property for over 20 years with his family members, and that the respondents were attempting to grab the property. The written statement also denied the signatures of the appellant on the mutual agreement dated 29th July 2009 as forged. The appellant further asserted, in the written statement, that, when attempts were made to remove the appellant from the suit property, the appellant approached the local police where, the respondents “manipulated the complaint detrimental to the



interests of the (appellant) by projecting themselves to be owners of the property”. The written statement further denied the ownership, by the respondents, of the suit property.

5. Replication was filed by the respondents to the aforesaid written statement of the appellant and, thereby, pleadings in the suit were completed.

6. In the criminal proceedings, which followed before the learned Metropolitan Magistrate, South-East consequent on FIR 178/2009, the appellant testified on oath, on 5th June 2012, that he had indeed made a complaint to the police alleging dispossession, from the Jhuggi being occupied by him, by third party miscreants. The complaint, which was exhibited in the said proceedings as Ex. PW-3/A, has not been placed on record by the appellant. However, FIR 178/2009, registered consequent to filing of the said complaint, is on record, and a reading of the FIR reveals that the appellant has, indeed, acknowledged, in the FIR, that Respondent 1 was the owner of the suit property and that Respondent 2 had inducted the appellant in the suit property as a caretaker. The exact recitals to that effect, as contained in the FIR, read thus:

In vernacular

“यह प्लॉट इकबाल अहमद s/o निसार अहमद R/O H No. 1411 गली कल्लू खवास, चितली कवर जामा मस्जिद दिल्ली का हैं। जिनकी देख भाल इनके भाई मुजीद अहमद करते हैं। वह अक्सर वहां आते हैं उन्होंने ही मुझे इस प्लॉट की देख भाल के लिए रखा हैं।”



In translation

This plot belongs to Iqbal Ahmed S/o Nisar Ahmed R/o 1411, Gali Kallu Khawas, Chitli Kavar, Jama Masjid, Delhi and his brother Mujid Ahmed has kept me as a Caretaker to take care of the property.”

7. The learned SCJ observed that the recital, in the complaint filed by him before P.S. Jamia Nagar, on the basis of which FIR 178/2009 was registered on 28th July 2009, to the effect that Respondent 1 was the owner of the suit property and that he had been inducted in the suit property as a caretaker by Respondent 2, amounted to an admission of the fact that the suit property was owned by Respondent 1 and the right of the appellant was, at the highest, that of a licensee. Placing reliance on the judgment of the Supreme Court in *Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeria*¹, the learned SCJ held that on the admission of the appellant, in the complaint lodged by the appellant at P.S. Jamia Nagar, which culminated in FIR 178/2009 dated 28th July 2009 could be treated as an admission for the purpose of Order XII Rule 6 of the CPC. This admission, noted the learned SCJ, acquired greater sanctity, as the lodging of the complaint and the FIR in the police station was acknowledged and admitted by the appellant during the recording of evidence on 5th June 2012 in the criminal case, resulting in the complaint being exhibited as Ex. PW-3/A. The lodging of the FIR had, therefore, been testified on oath by the appellant, during the course of proceedings in the said criminal case emanating from FIR 178/2009.

¹ (2012) 5 SCC 370



8. During the pendency of the suit, the respondents filed an application under Order XII Rule 6 of the CPC, seeking a judgment on admissions stated to have been made by the appellant in FIR 178/2009 dated 28th July 2009, lodged by the appellant at PS Jamia Nagar. In the said FIR, the appellant categorically accepted that the suit property was owned by Respondent 1 and that he had been appointed as a caretaker therein by Respondent 2. On the basis of this admission, the respondents sought, in their application under Order XII Rule 6 of the CPC, a decree on admissions in the suit instituted by them.

9. The application of the respondent under Order XII Rule 6 of the CPC was adjudicated by the learned SCJ *vide* order dated 16th October 2020. The learned SCJ held that, as a Caretaker in the suit property inducted by Respondent 2, the appellant did not have any right to remain in possession of the suit property, after the licence, on the basis of which the appellant had been permitted to remain in possession thereof, stood withdrawn by the respondents.

10. Resultantly, the learned SCJ partly decreed CS 50364/2016 to the extent of directing the appellant to hand over peaceful and vacant possession of the suit property to the respondents and to remove his belongings therefrom within a period of one month.

11. The appellant appealed against the said partial decree of the learned SCJ to the learned ADJ *vide* RCA 65/2020, which stands dismissed by the judgment dated 29th April 2022, under challenge in the present second appeal preferred under Section 100 of the CPC.



12. Before the learned ADJ, the appellant sought to contend that, in view of the denial, by the appellant, of his signature on the mutual agreement dated 29th July 2009, whereunder licence to occupy the suit property had purportedly been granted by the respondents to the appellant, the learned SCJ could not have proceeded to partly decree the suit. The aspect of whether the licence on the mutual agreement dated 29th July 2009, was genuine or forged, it was submitted, was a matter of trial.

13. Apropos the admission, by the appellant, in the complaint lodged by him at PS. Jamia Nagar, which culminated in registration of FIR 178/2009, the appellant contended that he was not conversant with Hindi or English and the complaint had been written by Respondent 1, incorporating, therein, admissions by the appellant to the effect that the suit property was owned by Respondent 1 and that the appellant was merely a caretaker therein.

14. To counter the said admissions, the appellant sought to rely on his deposition in examination-in-chief and cross-examination, as recorded in the criminal proceedings, following FIR 178/2009 which may, therefore, be reproduced *in extenso*, thus:

“05.06.2012

PW-3 Sheikh Abideen S/o Sh. Wajid Ali r/o P-229, Nafis Road, Batla House, Jamia Nagar, Delhi, Permanent address:- Village Kahela Kalu Tola District Malda, PS Latua, West Bengal.



On SA

Before three years back in the month of June I do not remember the exact date. There had a dispute of plot with Mugal Art and Sarfaraz and Sarfaraz threatened me to vacate the plot. I asked him to discuss with the Mujid. In the above said dispute person namely Mujid always help me. One day heavy rain was falling at Jhuggi and one person putting cloth around his face came in my jhuggi and kicked my jhuggi and snatched the key of my rikshaw and thrown my rickshaw out of my plot and also thrown all articles of the jhuggi from the jhuggi and fixed the angles and cover with the steel wires. The above said person associate with the two other ladies. Accused who entered in my jhuggi is not present in the court. He also confined me in my jhuggi and in the morning he get me out from my jhuggi and took the possession of my jhuggi. Then I called the Mujid (Delhi Wala). Police also came at the spot and took me to the PS. One person in the PS belonging to Sarfaraz told me that to gave Rs. 1,00,000/- and take the possession of the jhuggi. He is also not present in the court. Police asked to the trespasser that if you purchased the plot then why he had trespass in the night and took possession in the night. After that police helped me and gave the possession of my jhuggi. Till now I am living in my jhuggi. I made a complaint to the police regarding dispossession from my jhuggi by the person of the Sarfaraz. The same is Ex. PW3/A which bears my signature at point A. After than incident, once again one threatened was given by the Sarfaraz (Mugai Art Wala)

At this stage, Ld. APP wants to cross examine the witness as he is resiling from his earlier statement. Heard. Allowed.

XXXX by Ld. APP for State

I do not remember whether the above said incident was took place on 28.07.2009. However, it is took place in the night at about 1.30 AM. There were around 30 persons entered in my jhuggi on that day. I do not remember whether the persons namely Asif Khan who had held Saria in his hand and telling himself as the owner of the plot and other persons namely Masroor, Jahir, Mohd. Khurram and Abdul Wahab entered in my jhuggi. I cannot identify the above said persons and persons who are present in the court today.



At this stage, Ld. APP pointed out on the accused and asked the name of the accused. They disclosed their name as Asif Khan, Abdul Wahab and Masroor. Witness cannot identify that persons.

Q. How can you disclosed the name of the above said persons in the complaint Ex. PW#/A to the police?

Ans. I did not disclose their name before the police.

Q. Whether the above said persons had took the possession of your plot?

Ans. No.

Police did not arrest the accused persons in my presence and I did not give any document of my jhuggi to the police. It is correct that police had recovered my articles and gave me and put them in my jhuggi and took my signature at the recovery memo Ex. PW3/B and Ex. PW3/C which bears my signature at point A. It is correct that my signature had been obtained on the seizure memo of the copy of documents of the plot which is Ex. PW3/D which bears my signature at point A. It is correct that I had signed on arrest memos Ex. PW3/E, PW3/F and PW3/G which bears my signature at point A respectively. It is correct that there is my signature on the personal search memo of the accused persons which is Ex. PW3/H, PW3/I and PW3/J which bears my signature at point A respectively. Vol. I had signed papers which police did not read over to me. It is wrong to suggest that I am deposing falsely in order to save the accused persons and under the pressure of the accused persons.

At this stage, photographs attached with the case is shown to the witness in which jhuggi, articles of the jhuggi and rikshaw are shown by the witness and are correctly identified. The same are Ex. P1 to P13 (colly)

XXXX by Sh. Shakil Ahmed, Counsel for accused

Nil. Opportunity given.”

15. The learned ADJ concurred with the learned SCJ and held that,



in view of the admission by the appellant in the complaint dated 28th July 2009, based on which FIR 178/2009 was registered at PS. Jamia Nagar, no fault could be found with the learned SCJ in his decision to partially decree the suit under Order XII Rule 6 of the CPC. It was observed that the said complaint had been exhibited in the criminal proceedings following the registration of the FIR 178/2009 as Ex. PW-3/A. In view of the said complaint, the FIR and the admissions contained therein, the learned ADJ held that the learned SCJ had correctly decreed the suit instituted by the respondents against the appellant, qua the prayer for eviction of the appellant from the suit property and restoration of possession of the suit property to the respondents.

16. Aggrieved thereby, the appellant has approached this Court under Section 100 of the CPC.

17. Mr. Chaurasia, learned Counsel for the appellant, has basically reiterated the contentions which were advanced by the appellant before the learned ADJ. He also drew my attention to the record of cross-examination of the appellant in the criminal proceedings which followed registration of FIR 178/2009. He submits that there was no admission, in the entire record of cross-examination of the appellant of Respondent 1 being the owner of the suit property or of Respondent 2 having inducted the appellant as a caretaker therein.

18. Mr. Chaurasia further drew attention to the documents, which were filed by the respondents with the suit, to submit that there was no



document which evidenced the ownership of the respondents over the suit property. Insofar as the mutual agreement dated 29th July 2009 is concerned, Mr. Chaurasia submits that it was significant that the agreement was executed on the very next day after the FIR was registered. He submits that, as the appellant had disputed his signature on the mutual agreement, and specific issues had been drawn up, with respect to whether the signature on the mutual agreement was forged or genuine and whether the appellant was the licensee of the respondents, the learned SCJ could not have decreed the suit qua the aspect of possession even before the issues were tried.

19. Mr. Chaurasia also invited my attention to an earlier application filed by the respondents in CS 50634/2016 under Order VI Rule 16 of the CPC, for striking down of vexatious and scandalous pleadings. He has specifically drawn my attention to the following passages from the order dated 6th January 2015, whereby the learned SCJ dismissed the said application.

“Order 6 Rule 16 CPC permits striking down of vexatious and scandalous pleadings. Plaintiff has averred that the pleading is vexatious and scandalous, as the stand taken in the Written Statement is contrary to the contents of the FIR bearing no. 178/2009, Police Station Jamia Nagar. I have perused the said FIR. Charge-sheet was filed on the basis of said FIR and defendant herein has already been examined by the Court. A certified copy of the statement recorded in the Court is also placed on record by the plaintiffs with their rejoinder. In the said statement before the Ld. Criminal Court, the defendant did not accept the contents of the FIR. It is the settled principle of law that the FIR is not a substantive piece of evidence and can only be equated with the previous statement of the



witness which can be used to contradict or corroborate him. In the present case as well, the plaintiffs can very well use the contents of the FIR to contradict the defendant at the stage of evidence, however, there is no unambiguous and uncontroverted statement of the defendant to the effect that he was the caretaker of the suit property. This being so it cannot be concluded at this stage that the stand taken by the defendant in his Written Statement is vexatious and Written Statement cannot be struck off.”

20. Mr. Chaurasia relied on the observations/findings in the aforesaid order that to the effect that, in the statement of the appellant recorded before the criminal court consequent to FIR 178/2009, the appellant had not accepted the contents of the FIR, as well as the later observation, in the same para that there was no unambiguous or uncontroverted statement of the appellant to the effect that he was a caretaker in the suit property.

21. Mr. Chaurasia has also placed reliance on the judgment of the Supreme Court in *Hari Steel and General Industries Ltd v. Daljit Singh*², emphasizing the following passages therein:

“2. The learned Single Judge has dismissed the application in IA. No.1557 in the aforesaid suit, filed under Order 12 Rule 6 of the Civil Procedure Code. Respondent 1 and 2 – plaintiffs, have filed the aforesaid application for judgment, on admissions claimed by them in the suit. The order of learned Single Judge is reversed by the Division Bench on appeal, filed by the plaintiffs, by granting reliefs as referred above.

² (2019) 20 SCC 425



10. After filing written statement in the suit, respondent Nos. 1 and 2/plaintiffs have filed IA No.1557 of 2007 under Order 12 Rule 6 of CPC, praying for judgment based on certain claimed admissions. A copy of the application filed in IA No.1557 of 2007 is placed on record. The aforesaid application is filed mainly claiming that the appellants in bail Application Nos. 4109-4110 of 2006 seeking anticipatory bail in connection with the crime registered on complaint filed by impleaded fourth respondent, have categorically admitted their readiness and willingness to execute a sale deed in their favour, in terms of the agreement dated 3-5-2005. The bail applications referred above were filed in connection with the crime registered in FIR No.517 of 2006 on the file of Police Station Sarita Vihar, which was registered on the complaint filed by Shri Praveen Kumar Jolly (First Buyer) registered for offences under Sections 420 and 120-B IPC. The aforesaid complainant, Sri Praveen Kumar Jolly has alleged that during the subsistence of MOU entered in their favour on 24-5-2003, for a portion of the schedule property have entered into another agreement with the respondent Nos. 1 and 2 on 3-5-2005. Thus, it is pleaded that the appellants herein by entering into multiple agreements have committed the offence of cheating. Except claimed admissions alleged to have been made by the appellants-defendants' counsel during the hearing of the anticipatory bail application, no other admissions are claimed in the application. The said interlocutory application is contested by appellants and other defendants who have seriously disputed the genuineness of the agreement dated 3-5-2005 alleging that pp. 3 and 4 of the agreement have been replaced and substituted by pages which bear forged signatures of the defendant No.2. Further they also disputed stating that, all throughout the case of the appellants is only admitting receipt of Rs 2 crores but not Rs Five crores as claimed by the plaintiffs. Further, the relief sought in the interlocutory application is opposed by the appellants pleading that the forgery and fabrication of the agreement dated 3.5.2005 came to light when the said agreement was produced by the plaintiffs in CS(OS) No. 1508 of 2005 filed by Sri Praveen Kumar Jolly and immediately on receipt of copy of the agreement dated 3-5-2005, they also filed an application in IA No.61 of 2006 in CS(OS) No.1508 of 2005 under Section 340 of CrPC, challenging the genuineness of the agreement dated 3-5-2005. Thus, it is pleaded that unless genuineness of the



agreement dated 3-5-2005 is decided finally, no decree for specific performance can be claimed.

29. By applying the ratio laid down by this Court in the aforesaid judgments, it is to be held that there are no categorical and unconditional admissions, as claimed by the respondents-plaintiffs. In view of the stand of the appellants that, the pp. 3 and 4 of the agreement dated 3-5-2005 are tampered and their signatures are fabricated, when specific issue is already framed, it cannot be said that there are categorical and unconditional admissions by the appellants. Mere admission of entering into arrangement/contract on 7-4-2005 and 3-5-2005 itself cannot be considered in isolation, without considering the further objections of the appellants that certain pages in the agreement are fabricated. In case the appellants prove that the agreement is fabricated as claimed, post-trial it goes to the root of the case on the claim of the respondents-plaintiffs. Hence, we are of the view that the aforesaid judgments fully support the case of the appellants.

36. For the aforesaid reasons we are of the view that the High Court fell in error in passing the impugned judgment, decreeing the suit by delivering the judgment on the application filed under Order XII Rule 6 of CPC. The impugned judgment is liable to be set aside. Accordingly, the same is set aside, with no order as to costs. Accordingly, the appeal is allowed and the impugned judgment dated 2-8-2018 rendered in *Daljit Singh v. Hari Steel & General Industries Ltd.* is set aside and the order of the learned Single Judge dated 24-7-2017 passed in *Daljit Singh v. Hari Steel & General Industries Ltd.* is restored. Consequently, the aforesaid IA No. 1557 of 2007 stands dismissed, with no order as to costs.”

22. I have heard both sides and have examined the material on record.



23. This Court is exercising jurisdiction in the present case under Section 100 of the CPC. There are concurrent findings of fact, to the effect, that Respondent 1 is the owner of the suit property and that the appellant is a caretaker therein inducted by Respondent 2. Concurrent findings of fact are ordinarily not to be interfered with, under Section 100 of the CPC, unless and until they suffer from perversity.

24. A second appeal under S.100 CPC lies only on substantial questions of law. *Hero Vinoth v. Seshammal*³ holds thus, on the concept of “substantial question of law” in the context of S.100 of the CPC:

“21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means - of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with - technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. Ram Ditta*⁴, the phrase "substantial question of law" as it was

³ (2006) 5 SCC 545

⁴ AIR 1928 PC 172



employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In Sir *Chunilal*⁵ case the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju*⁶: (Sir *Chunilal*⁵ case, SCR p. 557)

‘When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law.’

This Court laid down the following test as proper test, for determining whether a question of law raised in case is substantial: (Sir *Chunilal*⁵ case, SCR p. 557-58)

‘The proper test for determining whether a question

⁵ AIR 1962 SC 1314

⁶ AIR 1951 Mad 969



of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.’ ”

25. Perversity, in the matter of appreciation of evidence, is said to exist where the Court either takes into account irrelevant material or eschews relevant material for consideration or arrives at a finding which no reasonable person conversant with the facts and the law and the evidence on record would arrive at⁷. Absent such inhibiting factors, the exercise of appreciation of evidence must necessarily stop with the first appellate Court and the second appellate Court, exercising jurisdiction under Section 100 CPC, is not allowed to trespass into that territory.

⁷ Refer *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra* (2010) 13 SCC 657, *Damodar Lal v. Sohan Devi* (2016) 3 SCC 78, *S.R. Tewari v. U.O.I* (2013) 6 SCC 602, *Rajinder Kumar Kindra v. Delhi Administration* (1984) 4 SCC 635, *Kuldeep Singh v. The Commissioner of Police* (1999) 2 SCC 10, *Gamini Bala Koteswara rao v. State of A.P* (2009) 10 SCC 636, *Babu v. State of Kerala* (2010) 9 SCC 189



26. In the present case, learned Counsel for the appellant does not dispute the fact that, in the complaint dated 29th July 2009 lodged by him at PS. Jamia Nagar, which resulted in the registration of FIR 178/2009. The appellant had indeed acknowledged the suit property to be owned by Respondent 1 and that he had been inducted into the suit property by Respondent 2 as caretaker. This admission finds place in the complaint as well as in the FIR. During the course of recording of evidence in the criminal proceedings, following the FIR, the appellant, as PW-3, specifically admitted the fact of filing the aforesaid complaint by him at police station Jamia Nagar on 27th August 2009, resulting in the complaint being exhibited as Ex. PW-3/A. It is not the case of the appellant that, during the course of recording of the said evidence, there was any denial of the contents of the said FIR.

27. Inasmuch as considerable reliance has been placed by Mr. Chaurasia as well as by the appellant before the learned ADJ on the examination-in-chief and cross-examination of the appellant, as PW-3, in the criminal proceedings, which followed FIR 178/2009, I have minutely perused the said examination-in-chief and cross-examination. There is not a whisper of an averment, anywhere in the examination-in-chief or cross-examination, denying the ownership of Respondent 1 over the suit property or the induction of the appellant in the suit property, as a caretaker by Respondent 2.

28. All that Mr. Chaurasia would seek to rely upon, in the said record of cross-examination, is a voluntary statement made by the appellant during the cross-examination to the effect that he “had



signed papers which police did not read over to me”.

29. There is a world of difference between asserting that the FIR had not been read over to him by the police and denying the contents of the FIR or the assertions contained therein. Interestingly, the record of cross-examination does not even seek to state that the appellant was not conversant with the language in which the complaint or the FIR was written, as Mr. Chaurasia would seek to contend before this Court.

30. In that view of the matter, the mere statement that the police had not read over the papers to the appellant cannot amount denial , by the appellant, of the correctness of the contents of the complaint or, consequently, of the contents of FIR 178/2009.

31. In any event, these are matters which reside in the realm of appreciation of evidence. The appellant had, clearly and in no uncertain terms, admitted, in the complaint lodged by him at P.S. Jamia Nagar, that Respondent 1 was the owner of the suit property and that the appellant had been inducted in the suit property by Respondent 2 as a caretaker.

32. No fault, therefore, can be found either with the learned SCJ or with the learned ADJ for relying upon the said admissions in order to partly decree the suit under Order XII Rule 6 of the CPC, qua the aspect of possession.



33. The factum of ownership of the suit property by Respondent 1 and of the appellant being in occupation of the suit property merely as a Caretaker at the instance of Respondent 2 having thus been admitted, once Respondent 1 had terminated the licence under which the appellant continued to occupy the suit property, there was no justification for the appellant to continue in such occupation.

34. The concurrent findings of fact, on this aspect, by the learned SCJ and the learned ADJ do not, therefore give rise to any substantial question of law within the meaning of Section 100 of the CPC, as would justify entertaining of the present second appeal.

35. The second appeal is accordingly dismissed in *limine* with no orders as to costs.

C.HARI SHANKAR, J

SEPTEMBER 22, 2022

r.bararia