



2024:DHC:8331-DB



\$~181

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

+ **FAO(OS) 152/2024 & C.M.Nos.62700-62701/2024**

**KUSUM JAIN THRU HER POWER OF ATTORNEY HOLDER SH
RAJEEV JAIN**Appellant

Through: Mr.Atul Gupta, Advocate.

versus

SURESH CHAND JAINRespondent

Through: Mr.Jai Prakash Sharma, Advocate.

%

Date of Decision: 24th October, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present appeal has been filed challenging the order dated 04th September, 2024 passed by the learned Single Judge in I.A. No.14455/2022 in CS(OS) No.557/2018. The Appellant (Plaintiff in the subject suit) had filed the aforementioned I.A. under Order XII Rule 6 of the Code of Civil Procedure, 1908 ('CPC') praying for a decree on the basis of an alleged admission by the Defendant (Respondent herein) which was dismissed by the learned Single Judge. The subject suit has been filed seeking a decree of possession in favor of the Appellant in respect of the suit property admeasuring 100 sq. yards, bearing no. 44, Veer Nagar, Jain Colony, Delhi – 110007.

2. It is the Appellant's case in the underlying suit that the subject property admeasuring 200 sq. yards was purchased jointly by the father of

Signature Not Verified

Digitally Signed By: ASWANT
SINGH RAWAT
Signing Date: 25/10/2024
20:58:50

FAO(OS) 152/2024

Page 1 of 3



the Appellant and the mother of the Respondent and there was an oral partition between them, post which they both took 100 sq. yards each of the property. It is further alleged that the mother of the Respondent had subsequently been permitted to stay on the property falling under the portion of the Appellant owing to her ill health. It is the Appellant's case that after she passed away, the Respondent was occupying the suit property as a licensee and is liable to be evicted.

3. Learned counsel for the Appellant states that the learned Single Judge dismissed the said I.A on the Respondent's assertion that he was in adverse possession of the property and did not consider that the material on record indicates that the Appellant and her father were in continuous possession of the subject property.

4. He further states that in an earlier suit for partition filed by the Appellant bearing Civil Suit No. 51/2001, no such claim of adverse possession was made. He emphasizes that the possession of the suit property by the Respondent's predecessor in interest was only permissive in nature and cannot be regarded as adverse possession. He also states that the learned Single Judge has failed to appreciate that the Appellant and Respondent are first cousins.

5. Having heard learned counsel for the Appellant, this Court is of the view that the arguments advanced on behalf of the Appellant do not take into account the objects and reasons of Order XXII Rule 6 CPC wherein 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.”

6. In *Uttam Singh Duggal & Co. Ltd. vs. United Bank of India & Ors. (2000) 7 SCC 120*, it has been held that “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.”

7. A perusal of the I.A. filed by the Appellant in the subject suit reveals that the only ground raised therein is that the Respondent/Defendant has nowhere in his written statement denied that the Appellant/Plaintiff is the owner of the subject property. The said submission does not hold ground as the underlying suit has been filed by the Appellant seeking a decree of possession of the subject property. The Respondent/Defendant has categorically stated in his written statement that he “*is in continuous, uninterrupted, open, hostile and adverse possession of the suit plot*”. In the written statement, the Defendant/Respondent has denied that the mother was the licensee of the Plaintiff/Appellant. Therefore, the aspect of possession has itself been contested by the Respondent/Defendant and no kind of admission can be construed from the same to attract the rigor of Order XII Rule 6 CPC. Consequently, the present appeal being bereft of merit is dismissed along with the applications.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

OCTOBER 24, 2024
KA