

(2020) 08 DEL CK 0189

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 1729 Of 2019, Civil Miscellaneous No. 52281 Of 2019

M/S Anjaneya Bisanpur Agro Industries Pvt. Ltd

APPELLANT

Vs

Dilawar Singh Rawat & Anr

RESPONDENT

Date of Decision : 17-08-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 20, Order 10 Rule 1, Order 12 Rule 1, Order 14 Rule 1, Order 15 Rule 1, Order 14 Rule 1(5), Order 10 Rule 2, Order 12 Rule 6, Order 7 Rule 11

Citation : (2020) 08 DEL CK 0189

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Gaurav Mitra, Vaibhav Mishra, Renu Verma

Final Decision : Allowed

Judgement

Jyoti Singh, J

1. Assailed herein is an order dated 22.11.2019 passed by the Trial Court dismissing an Application filed by the Petitioner under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) in CS/DJ/No.490/2018. The narrative in the present case would also require reference to certain facts and events detailed in the judgement passed by this Court in CS(OS) No.2932/2011, which was decided on 30.01.2014 and Decree was passed on 03.03.2014.

2. Petitioner herein is a Private Limited Company and the Directors of the Company are Mr. Binay Kumar Mishra, Mr. Sanjay Mishra, Mr. Vikas Mishra and Mrs. Tulika Mishra. As per the case set up by the Petitioner, it had purchased premises bearing No.K-1 Hauz Khas Enclave, New Delhi measuring 980 sq. yards (hereinafter referred to as "Suit Property") from one Shri Mohinder Singh Verma vide Sale Deed registered in the office of Sub-Registrar on 08.10.1973.

3. On 08.01.1976 Petitioner leased out the First and Second floor of the main

building as well as one garage and two servant quarter rooms above the garage on the Second floor of the Servant Quarter Block to Respondent No. 2 herein. Lease was initially for a period of three years commencing from 08.01.1976 but was subsequently renewed until Respondent No. 2 vacated the premises on 22.07.2014. Respondent No. 2 is admittedly a Government of India Undertaking.

4. Respondent No. 1 herein is the son of one Mr. Dalip Singh, a former contractual employee of Respondent No. 2 and was residing with his father in one servant quarter room on the second floor of the servant quarter block (above garage) having an area of about 120 square feet (hereinafter referred to as "Premises"). The right to reside in the Premises was available to the father of Respondent No. 1 till the tenure of his service or till the vacation of the Leased premises by Respondent No. 2, whichever was earlier.

5. At this stage, it is relevant to take note of another litigation that ensued between the Petitioner and Respondent No. 2 herein. In the said Suit, being CS(OS) 2932/2011, Respondent No. 2 was impleaded as Defendant No. 4. Defendant No. 1 had allegedly purchased the suit property through one Mr. S.K. Malhotra in 1985, to whom the Company has sold the Suit Property allegedly in 1971. Defendant No. 2 was an Associate of Defendant No. 1 and Defendant No. 3 was a Chartered Accountant, who had allegedly executed/fabricated and forged documents in favour of Defendant Nos. 1 and 2 to show the transfer of suit property. It appears that through a Meeting of the Board of Directors allegedly convened on 07.10.2011 as well as through subsequent EGMs, Defendant Nos. 1 to 3 executed certain E-Forms and other documents on the basis of which they claimed to be the Shareholders of the Petitioner. Complaints with the Police and Economic Offences Wing (EOW) were filed by the Petitioner against the said Defendants.

6. Apprehending the alienation of the property by Defendant Nos.1-3, Petitioner filed a Suit in this Court, being CS(OS) 2932/2011, with respect to the Suit Property and Respondent No. 2 was also impleaded therein as portions of the suit property were leased to Respondent No. 2. Petitioner was Plaintiff No.5 and other Directors of the Company were Plaintiff Nos. 1 to 4. Reliefs sought were as under:

"a) declaration that the Plaintiff Nos.1, 2 and 3 are the only shareholders of the Plaintiff No.5 Company and Plaintiff No.1, 2, 3 and 4 are only directors of the Plaintiff No.5 Company;

b) declaration that the purported e-form 32 bearing SRN B24843336 dated 15.11.2011, e-form 32 bearing SRN B24893489 dated 15.11.2011, e-form 32 bearing SRN 824934150 dated 16.11.2011, e-form 5 bearing SRN B24874737 dated 15.11.2011, e-form 2 bearing SRN S07047160 dated 20.11.2011 and the supporting attachments thereto, more particularly resolution dated 07.10.2011 purporting to increase the authorized share capital of the Plaintiff No.5 Company from Rs. 5,00,000/-(Rupees Five Lacs Only/-) to Rs.90,00,000/- (Rupees Ninety Lacs Only), resolution dated 01.11.2011 purporting to allot 2,49,000/- equity

shares to Defendant No.1 and 1,000/-equity shares to Defendant No.2, and resolutions dated 29.10.2011, 07.11.2011 and 15.11.2011 purporting to Induct the Defendant Nos.1 and 2 as directors and to remove Plaintiff Nos. 1, 2, 3 and 4 as directors, are illegal, fraudulent; fabricated, null, void and non-est conferring no rights or interests whatsoever, on the Defendant Nos.1 and 2 in the Plaintiff No.5 Company and are not binding upon the Plaintiff No.5 Company;

c) permanent Injunction restraining the Defendant Nos.1, 2 and 3, their agents, associates, representatives, employees, servants, successors in title or any one acting for and on their behalf from selling, alienating, transferring, encumbering in any manner, creating any third party interest and/or disposing the property bearing no. K-1, Hauz Khas Enclave, New Delhi-110015 owned by the Plaintiff No.5 Company and further in dealing in any manner with the moveable assets or property of the Plaintiff No.5 Company;

d) permanent injunction restraining the Defendant Nos.1, 2 and 3, their agents, associates, representatives, employees, servants, successors in title or any one acting for and on their behalf from representing, acting or holding themselves out in any manner whatsoever, as shareholders or directors of the Plaintiff No.5 Company in public or before any authority or any other person, and acting in any manner in pursuance of and/or in furtherance to the illegal, fraudulent, fabricated and forged e-form 32 bearing SRN B24843336 dated 15.11.2011, e-form 32 bearing SRN B24893489 dated 15.11.2011, e-form 32 bearing SRN B24934150 dated 15.11.2011, e-form 5 bearing SRN B24874737 dated 15.11.2011, e-form 2 bearing SRN S07047160 dated 20.11.2011 and the supporting attachments thereto, more particularly resolution dated 07.10.2011 purporting to increase the authorized share capital of the Plaintiff No.5 Company from Rs. 5,00,000/- (Rupees Five Lacs Only/-) to Rs. 90,00,000/- (Rupees Ninety Lacs Only/-), resolution dated 01.11.2011 purporting to allot 2,49,000/- equity shares to Defendant No.1 and 1,000/- equity shares to Defendant No.2, and resolutions dated 29.10.2011, 07.11.2011 and 15.11.2011 purporting to induct the Defendant Nos.1 and 2 as directors and to remove Plaintiff Nos. 1, 2, 3 and 4 as directors in the Plaintiff No.5 Company;

e) permanent injunction restraining the Defendant No. 4, their agents, associates, representatives, employees, servants, successors in title or any one acting for and on their behalf from handing, over the possession of the first floor, second floor, two servant quarters and one garage (back entrance) of the property bearing no. K-1, Hauz Khas Enclave, New Delhi-110015 owned by the Plaintiff No.5 Company to the Defendant Nos. 1, 2 and 3, their agents, associates, representatives, employees, servants, successors in title or any one acting for and on their behalf."

7. Petitioner disputed the alleged claims of Defendant Nos. 1 to 3 of having purchased the suit property as well as being Shareholders/Directors in the Company. A plethora of documents were placed on record by the Petitioner to substantiate its case that the Suit Property had been purchased by the Petitioner

by way of a registered Sale Deed, which was exhibited as Exhibit PW-1/4. It was the case of the Petitioner that the Suit Property was first sold by Sale Deed executed on 22.02.1960 by DLF Housing and Construction Pvt. Ltd. in favour of Jwala Properties, which sold the property to one Mrs. Veena Goel vide Sale Deed dated 24.01.1962 registered on 09.02.1962. Mrs. Goel sold the property to Mr. M.S. Verma vide Sale Deed dated 15.11.1962, registered on 19.11.1962 and finally Mr. M.S. Verma sold the property to the Petitioner. All the Registered Sale Deeds were exhibited and proved by PW-1 through his oral testimony. Defendant Nos. 1 to 3 were proceeded ex-parte and Defendant No. 4 did not file Written Statement, claiming to be a proforma Defendant.

8. Court after perusing the evidence on record gave a finding that the chain of documents placed on record showed that the Petitioner was the lawful owner of the Suit Property and held as under:

"62. The above chain of documents, which has been placed on record, would show that the plaintiffs are the lawful owners of the suit property. The evidence led by PW-1 and PW-2 remain unchallenged. Plaintiff no.5 company had also leased the ground floor, two servant quarters and one garage of the suit property including to M/s Kochi Refineries Limited on 16.12.1978 by a lease deed, which has also been exhibited as Exhibit PW-1/18. Plaintiff no.5 company has also been regularly filing the annual return with the Registrar of company, which would clearly establish that plaintiffs no.1 to 4 are the only Directors of plaintiff no.5 company. The annual returns for the financial years 2007-2008, 2008-2009 and 2009- 2010 have been exhibited as Exhibit PW-1/19, which Clearly prove that it is only plaintiffs no.1 to 4, who are the lawful Directors of plaintiff no.5 company. Plaintiffs also have taken all the necessary steps to safeguard, their interest, which has proved as a complaint was made by the plaintiffs to the DCP, South Delhi District, at the first opportunity available on 21.6.2011 (Exhibit PW-1/21). Subsequent complaint dated 7.9.2011 (EOW) has been exhibited as Exhibit PW-1/22 and FIR NO. 196/2011 registered with EOW has exhibited as Exhibit PW-1/23. Consequent to the FIR being registered defendants no.1 and 2 and one, Mr.Sunil Jain, was arrested and a charge sheet had been filed against them. Plaintiffs have also been able to establish that on receipt of GAR7 receipts they learnt that some documents were uploaded on the site or ROC including three E-Form 32 and E-Form 5 had been filed on behalf of plaintiff no. 5 company regarding alleged change in the composition of Board of Directors, based on the minutes of the meeting, which was convened on 07.10.2011.

63. It is the case of the plaintiffs that no such meeting was held and the change in composition by defendants no.1 and 2 was with a view to play fraud upon the plaintiffs. There is no rebuttal to the deposition made on oath. It may also be noticed that defendants no.1 and 2 had uploaded one E Form-2 to show that the Board meeting was convened on 16.11.2011 wherein defendants no.1 and 2 allotted themselves 2.50 lakhs equity shares of Rs. 10/-, each.

64. Taking into consideration the evidence, which has been placed on record by

defendants no. 1 and 2 which remains unrebutted; the fact that defendants no.1 and 2-have not led any evidence; and only defendant no.3 has cross-examined two witnesses of the plaintiffs that too with regard to the question of digital signature, which also has no bearing to the reliefs, which are sought to be claimed by the plaintiffs and the documents, which have been duly proved on record, the present suit is decreed in favour of the plaintiffs and against defendants in terms of Prayers (a) to (f) of the plaint."

9. Pursuant to the Decree, Respondent No. 2 vacated the Leased premises on 22.07.2014 and Respondent No. 1 herein assured the Petitioner that he would vacate the premises in a day or two. However, soon thereafter, Respondent No. 1 started making illegal demands for payment of Rs. 60 Lacs, to vacate the premises, which demand was later reduced to Rs. 40 Lacs.

10. Petitioner did not accede to the demands and hence Respondent No. 1 instead of vacating the premises, filed a Civil Suit being CS SCJ 83984/2016 (earlier numbered as Civil Suit No. 880/2014), seeking a Decree of permanent-cum-mandatory injunction restraining the Defendants in the Suit and their agents/representatives/legal heirs from forcibly and illegally evicting him and his family members, from the premises, till the original owner of the Suit Property came forward to lay a claim thereto. Pertinent it is to note here that in the said Suit, Respondent No.1 did not implead the Petitioner herein i.e. the Company, but only impleaded two of its Directors, namely Mr. Sanjay Mishra and Mr. Vikas Mishra. It is admitted between the parties that no injunction was granted to Respondent No. 1 (Plaintiff) in the said Suit. Prayer (a) in the Injunction Suit is relevant in this regard and is as under:

"a. Pass a decree for permanent cum mandatory injunction in favour of the plaintiff and against the defendants thereby restraining them and their agents, representatives, legal heirs, and servants, accomplices, from forcibly and illegally throwing out the plaintiff and his family members from the servant quarter of the suit property i.e. K-1, Hauz Khas Enclave, New Delhi till the original owner of the suit property comes forward to lay claim and settle the issues arising of the suit property."

11. Petitioner avers that Respondent No. 2 also wrote a letter dated 17.07.2014 to Shri Dalip Singh for vacating the premises. It is a matter of record that Shri Dalip Singh vacated the quarter, but his son, Respondent No.1, continues in illegal and unauthorized possession.

12. Petitioner's Directors who were Defendants in the Suit, filed an Application under Order VII Rule 11 CPC, seeking rejection of the Suit, to which Reply was filed by Respondent No. 1 (Plaintiff), taking a stand that Applicants had themselves admitted in the Application that Plaintiff was in permissive possession and therefore he was neither a trespasser nor an outsider. It was also averred in the Reply that the order of the High Court upholding the title of the Suit Property in favour of the Petitioner did not affect the rights of Respondent No. 1, as he

was not a party to the said Suit. Interestingly it was also averred that the Suit had been filed for permanent-cum-mandatory injunction and had nothing to do with the title of the Suit Property and was based on permissive user for the last more than 40 years. Relevant para of the reply is as under:

"3. That the contents of para 3(A) of the application are denied for want of knowledge. It is specifically denied that the plaintiff has concealed the material facts that the suit property is duly owned, controlled and peacefully possessed by the company and nobody else. It is submitted that the property being owned by the applicants in view of the order of the Hon'ble High Court does not at all affect the rights of the plaintiff as the plaintiff has not been party in that case. However, the plaintiff has filed the suit for permanent cum mandatory injunction and has nothing to do with the title of the suit property and the locus of the plaintiff is admitted by the applicants as permissive user for the last more than 40 years."

13. On 10.05.2018, Petitioner filed a Suit in the Trial Court for Possession and Mesne Profits for unauthorized use and occupation of the premises, as well as for permanent injunction against Respondent No. 1 and his legal representatives/ heirs/ nominees/ authorized representatives from subletting or parting with possession or creating any third party rights or interest in the Suit Property, from which the present petition arises.

14. Vide order dated 28.05.2018, Trial Court directed Respondent No. 1 to maintain status quo with regard to the Premises. After the Written Statement was filed By Respondent No. 1, Petitioner filed an Application under Order XII Rule 6 CPC read with Section 151 CPC for Judgement on admission. Alleged admissions by Respondent No. 1, on the basis of which the Application was filed, were the averments by Respondent No. 1 in reply to the Application under Order VII Rule 11 CPC in CS/DJ/NO. 273/2019, cross-examination of Respondent No. 1 on 13.12.2018 in CS/DJ NO. 273/2019, as well as certain portions of the Written Statement in the Suit from which the present Petition arises. Petitioner also sought to rely on the averments made by Respondent No.2 in its Written Statement admitting the execution of the Lease Deed between Petitioner and Respondent No. 2, as well as the employment of the father of Respondent No. 1 with Respondent No. 2 on a contract basis. It appears that no reply was filed by Respondent No. 1 to the said application and it was contested by oral arguments.

15. Vide impugned order dated 22.11.2019, Trial Court dismissed the application under Order XII Rule 6 CPC on twofold grounds:

(a) Respondent No. 1 in its Written Statement disputed the ownership of the Petitioner Company as well as his status as a trespasser and

(b) Claim of Respondent No. 1 to ownership by way of adverse possession.

16. Trial Court concluded that the averments made by Respondent No. 1 in the Application and Written Statement as well as the deposition during cross-

examination cannot be construed as admissions, much less direct or unequivocal admissions and dismissed the Application. It also observed that the factual and legal controversies raised by Respondent No. 1 in the Written Statement would require determination by the Court before the Decree can be passed. Relevant paras of the impugned order are as under:

"In the present case, the plaintiff while relying upon above discussed cross-examination and reply filed by the defendant no. 1 in other suit titled Dilawar Singh Rawat vs. Shekhar Chand Jain & Ors contends that where there are clear, un-ambiguous and unconditional admissions, this Court in exercise of power under Order XII Rule 6 CPC should pass appropriate judgment without waiting for determination of any other question. The plaintiff is also relying upon admission of the defendant no. 2 in the written statement. It implies that plaintiff is expecting that Court should interpret the version of the defendant no. 1 as admissions whereas record reveals that the defendant no. 1 in the written statement has disputed the ownership of plaintiff company as well as his status as trespasser rather claim his ownership by way of adverse possession, which can not be said to be clear admission. Definitely, where a claim is admitted, the Court has jurisdiction to pass a judgment favouring the plaintiff and pass a decree on admitted claim but at the same time, it cannot be lost sight that the Court should not deduce on admission, as the result of an interpretive exercise. It is held in the case of Raj Kumar Chandra. vs. Lucas Indian Services AIR 2006 Del 266 that the court's approach while considering whether any averment or omission to traverse any material allegations amounts to an admission cannot be subjective or one side. It has to necessarily, taken into consideration the implications which may arise from a party urging one contention or another, on the basis of what is on record.

In the light of above principles of law, reverting to the fact of the present case, the alleged admissions as referred above by the plaintiff cannot construe an interpretation as an admission much less a direct or unequivocal admission of defendant no. 1. In the written statement, factual and legal controversies have been raised by the defendant no. 1 which require determination by the Court before decree can be passed.

In view of the above discussion, application is declined."

17. Learned counsel for the Petitioner assailing the order, contends that Respondent no. 1 in his Reply to Application under Order VII Rule 11 CPC has clearly admitted that the property owned by the Petitioner in view of the Order of the High Court does not affect his rights as he was not a party thereto and this amounts to admitting the title of the Petitioner to the property. Relevant para is as under:-

"It is submitted that the property being owned by the applicants in view of the order of the Hon'ble High Court does not at all affect the rights of the plaintiff as the plaintiff has not been party in that case."

18. He has also admitted that he has no title to the Suit Property and is only seeking permanent-cum-mandatory Injunction, which is evident from the following paragraph:-

"However, the plaintiff has filed the suit for permanent cum mandatory injunction and has nothing to do with the title of the suit property...."

19. It is further contended that in the cross-examination conducted on 13.12.2018 in case being CS/DJ/NO. 273/2019, Respondent No. 1 accepted that he has no documents to show that the area in question was given to his father. Factum of his father being merely an employee of Respondent No. 2, as a cook, is also admitted. Relevant para reads as under:-

"I have no documentary proof to show that the area mentioned in site plan was given to my father..."

"My father was head cook in M/s. Hindustan Steel Works Construction Ltd. My father, mother and their five children, including me used to reside in the servant quarter."

20. Reliance is also placed on the cross-examination conducted on 06.01.2018 which is as under:-

"My father was employed with M/s. Hindustan Steel Works Construction Ltd. In year 2000 and was residing in suit property by virtue of his employment with said company. M/s. Hindustan Steel Works Construction Ltd. was a tenant in the suit property."

"..... My family used to live in the servant quarter in the premises."

21. Learned counsel argues that it was an error on the part of the Trial Court to hold that there was no clear and unequivocal admission by Respondent No. 1, whereas the fact is that he had categorically admitted that he was not claiming any title to the Premises and that was enough to decree the suit. Trial Court has not correctly appreciated the provisions of Order XII Rule 6 CPC, which clearly provide that Admission could either be in the pleadings or even "otherwise" and it gives a wide discretion to the Court to pass a Judgement based on an admission at any stage of the Suit either on an Application by any party or of its own motion.

22. Learned counsel for the Petitioner in support of his arguments placed his reliance on the judgement of a Division Bench of this Court in the case of Rajiv Srivastava v. Sanjiv Tuli and Ors., AIR 2005 Delhi 319, wherein there was a challenge to a decree passed by the Trial Court on an Application filed by Plaintiff under Order XII Rule 6 CPC and Court upheld the order of the Trial Court relying on a judgement of another Division Bench of this Court interpreting the provisions of Order XII Rule 6 CPC in ITDC Limited v. Chander Pal Sood and Son 84 (2000) DLT 337.

23. Learned counsel also relied on the judgement of the Supreme Court in Karam

Kapahi and Ors. v. Lal Chand Public Charitable Trust and Ors., (2010) 4 SCC 753, wherein the Supreme Court observed that the principles behind Order XII Rule 6 CPC are to give the Plaintiff a right to speedy judgement and either party could on the admission of the other party, press for a judgement and get rid of so much of the rival claims about which there is no controversy. To further strengthen the argument the Petitioner also relies on the judgements of this Court in Deepak Aggarwal & Anr vs Shakuntala Devi, 2019 SCC OnLine Del 6935 and A.N. Kaul vs Neerja Kaul & Anr, 2018 SCC OnLine Del 9597.

24. Learned counsel for the Respondent per contra contends that Respondent No. 1 filed a written statement categorically denying that the Petitioner is the owner of the Suit Property and that Respondent No. 1 is in unauthorized possession. The entire defence of Respondent No.1, as is evident from the written statement, is that the Suit Property was owned by Mrs. Veena Goel, who had died and since no one from her family came to claim the Suit Property, the Directors of the Petitioner Company, along with the Builders, forged and fabricated documents of ownership of the Suit Property in their favour and entered therein. Respondent No. 1 being the son of the caretaker, tried to stop their entry, but was beaten up by the musclemen hired by them.

25. Learned counsel argues that in 2014, Respondent No. 1 had filed a Suit for permanent-cum-mandatory injunction against dispossession, without due process of law and protection from harassment by the Director's of the Petitioner. Suit is still pending in the Trial Court and the evidence of the Defendants therein is yet to take place.

26. Learned counsel for the Respondent No.1 contends that Petitioner herein is not a Defendant in the suit filed by Respondent No. 1 and cannot claim any right to urge arguments with respect to the said Suit. It is argued that it is incorrect for the Petitioner to allege that Respondent No. 1 made any admission in Reply to the Application under Order VII Rule 11 CPC. Respondent No.1 has averred that the ownership right of the Petitioner, on account of the order of the High Court, does not affect the rights of Respondent No. 1, as he was not a party in the said case. Seen from any angle this cannot amount to an admission. In any case, the alleged admission would not help the Petitioner, as the Petitioner was not the Applicant in the said Application and nor was the Suit for injunction filed by Respondent No.1, against the Petitioner.

27. It is submitted that the Petitioner filed an Application under Order XII Rule 6 CPC in the Suit filed by it for Possession, on the premise that Respondent No.1 had admitted the ownership of the Petitioner with respect to the Suit Property, but this is totally incorrect. Respondent No. 1 has made no admissions regarding the ownership of the Petitioner and on the contrary has all through taken a stand that the owner of the property is one Mrs. Veena Goel, who died in suspicious circumstances and taking advantage, Petitioner forcefully took possession of the Suit Property.

28. Learned counsel next argues that the word "may" used by the Legislature in Order XII Rule 6 CPC makes the provision discretionary and cannot be claimed as a matter of right by the Petitioner. The Court is not bound to allow an Application unless it is satisfied that the alleged admissions by the other side are clear, unambiguous and unconditional. A perusal of the relevant pleadings would indicate that there are no admissions either in the written statement to the present Suit or in the Reply to the Application under Order VII Rule 11 CPC and least of all in the cross-examination, as alleged by the Petitioner.

29. Petitioner cannot rely on the Decree passed by this Court in CS (OS) 2932/2011 to claim a decree under Order XII Rule 6 CPC and the Trial Court would determine the rights of the Petitioner qua Respondent No. 1 in the Suit, after evidence is led. Thus the proceedings in the Suit must be allowed to continue and the present petition be dismissed, upholding the impugned order.

30. I have heard the learned counsels for the parties and examined their rival contentions.

31. From the above narrative and the arguments canvassed before the Court, it is clear that Respondent No. 1 is the son of one Mr. Dalip Singh who was admittedly a contractual employee of Respondent No. 2, a Public Sector Undertaking. Being employed as a Caretaker Mr. Dalip Singh as a part of his duty, was permitted to reside in the servant quarters block on the second floor. Respondent No. 1 being his son was living with him. As soon as Respondent No.2 vacated the Leased premises, Dilip Singh also vacated, but Respondent No.1 continued occupying the premises, without any legal right to do so.

32. Judgement and Decree of this Court in the earlier Suit filed by the Petitioner and its Directors, being CS(OS) No. 2932/2011, is relevant to be noticed at this juncture. Defendant Nos.1 to 3 therein staked a claim to the suit property on the basis of a Sale Deed executed on 12.08.1985, allegedly in their favour. Petitioner herein was plaintiff No. 5 in the said Suit, along with its Directors as Plaintiff Nos. 1 to 4. Apprehension of alienation of the Suit Property, by Defendants, led to Petitioner filing the said Suit, the prayers of which have been extracted above. Since Respondent No. 2 was a lessee in the premises, it was impleaded therein as Defendant No. 4. Petitioner succeeded in establishing its title and ownership to the Suit Property and a Decree was passed in its favour. The judgement has attained finality.

33. Respondent No. 1 does not and cannot controvert a very crucial fact that he never claimed title to the premises in his Suit and only sought a relief of permanent-cum-mandatory injunction, till the actual owner comes forward. Relief sought in the Suit, additionally, substantiates this. Written Statement filed in the Suit by the Petitioner, from which the present Petition arises, also contains clear averments that Respondent No. 1 has no claim to title or ownership in the property. It is thus clear that there is no title dispute between the parties herein and is equally clear that the claim of Respondent No. 1 is based on permissive

possession for a limited duration, till the actual owner stakes a claim. Relevant it would be to note here that in all the pleadings filed by the Petitioner the only defence set up by Respondent No. 1 is that the property belongs to one Mrs. Veena Goel, who died in suspicious circumstances and on that basis he disputes the title of the Petitioner.

34. Two conclusions become inevitable at this juncture. Firstly, that the right of Respondent No. 1 to remain in possession of the premises originates out of his being the son of a caretaker, employed by Respondent No. 2 and was therefore circumscribed by the tenure of his father with Respondent No. 1 or the vacation of premises by Respondent No. 2, whichever was earlier. Secondly, the objection to the Application under Order XII Rule 6 CPC is that the property is owned by Mrs. Veena Goel, who has expired.

35. The issue therefore that arises for consideration is whether the defence so set up is a material plea which requires framing of an issue and conduct of extensive trial for its determination in the facts and circumstances of the present case. In my view, the answer can only be in the negative. The plea, if I may say, is only to delay the handing over of the possession to its rightful owner and can be clearly termed as an ingenuous, clever and creative drafting by an astute lawyer, to drag the suit and take advantage of being in possession.

36. In *Ashoka Estate Pvt. Ltd. v. Dewan Chand Builders Pvt. Ltd.* 2009 SCC OnLine 894, the Court held that if a Plaintiff is entitled to seek a Decree on admissions, he cannot be deprived of the benefit only by an astute drafting of Written Statement and/or taking pleas which have no legs to stand on. Relevant part of the judgement is as under:

"26. The plaintiffs if otherwise found entitled to a decree on admissions, cannot be deprived thereof by astute drafting of the written statement and/or by taking pleas therein which have no legs to stand upon. This court is to read the pleadings of the parties meaningfully. Issues are to be framed on material and not all propositions of law and fact. A plea, which on the face of it is found by the court to be untenable, does not require the framing of any issue. The pleas of the defendants in the present case are found by me to be such, without calling for any trial whatsoever. If the said pleas of the defendants on the basis whereof the admitted liability of the defendants is sought to be defeated, are found to be untenable, naturally the impediment to the passing off a decree on the basis of admissions disappear. The apex court in *T. Arvindam v. T.V. Satyapal*, AIR 1977 SC 2421 has held that if on a meaningful-not formal-reading, claim is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the trial court should ensure that bogus litigation is shot down at the earliest stage. Again, in *Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512 it was held that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of suit; the court should interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the courts resources being used up in cases which will serve

no useful purpose. It was further held that a litigation which in the opinion of the court is doomed to fail should not further be allowed to be used as a device to harass. The said propositions equally apply to written statements/defence to the claim also."

37. In *Kawal Sachdeva v. Madhu Bala Rana*, 2013 SCC OnLine Del 1479, this Court declined to frame an issue and after extensively examining the plea set up by the Defendant, observed that Court should examine the meaning ascribed to the word "material" used in Order XIV Rule 1 CPC; whether an Issue is required to be framed on the clever drafting of the Advocates or the facts emerging on record, since, an Issue once framed, will require evidence to be led thereon, delaying the disposal of the suit. Hence false pleas and pleadings which have no basis in law must be cured. Relevant part of the judgement is as under:

"15. It was however put to the senior counsel appearing for the applicants/defendants no. 3 to 8 on 06.03.2013 as to what meaning is to be ascribed to the word "material" in Order 14; whether issues are to be framed on the clever drafting of the Advocates or on the facts as emerging on record. It was also observed that it cannot be lost sight of that an issue once framed requires evidence to be led thereon and which means delay in the disposal of the suit. It was yet further observed in the order dated 06.03.2013 that this aspect, though may not have been considered at any earlier point of time, time has come for Courts to look into the said aspect and the law which may have been good in times gone by, cannot be said to be good in the face of a changing societal status where false pleas in pleadings have become rampant. It is therefore felt that unless the Courts peruse the pleadings together with the material on record to determine whether the plea taken can be said to be a material one or not so as to invite framing of an issue thereon, the litigants, interested in protracted trial, would by clever drafting of pleadings and taking of pleas which otherwise have no legs to stand, would have a large number of issues framed, entitling them to examine a number of witnesses, thereby making a mockery of the judicial process. It was also prima facie observed in the order dated 06.03.2013 that in the state of the pleadings in the present suit, the plea of collusion between the defendants no. 1 and 2 is not made out. Liberty was also granted to the defendants no. 3 to 8 to press this aspect if at any point of time in trial it was felt that the defendant no. 2 is not pursuing her defence diligently and properly and is in collusion with the plaintiff and the defendant no. 1."

38. The Court in order to come to the said conclusion relied upon the earlier decisions of the Supreme Court in *D.M. Deshpande v. Janardhan Kashinath Kadam*, (1998) 8 SCC 315 and *Lakshmikant Shreekant (HUF) v. M.N. Dastur & Company Pvt. Ltd.*, 1998 (44) DRJ 502. Relevant paras of the judgement are as under:

"17. Reference may at the outset be made to *D.M. Deshpande v. Janardhan Kashinath Kadam* (1998) 8 SCC 315 where in the absence of particulars viz. date, mode and terms of creation of tenancy in the pleadings, it was held that an

issue on a bare claim of tenancy ought not to have been framed.

18. This Court in *Lakshmikant Shreekant (HUF) v. M.N. Dastur & Company Pvt. Ltd.* 1998 (44) DRJ 502 held that the Court is required to frame issues of fact or of law that necessarily and properly arise for determining the real controversy involved on the pleadings of the parties and that such issues arise when a material proposition of fact or law is affirmed by one party and denied by the other and the Court would not frame an issue which does not arise on the pleadings nor a issue need be framed on a point of law which is perfectly clear. It was further held that the Court is required to apply its mind and understand the facts before framing the issue. It was yet further held that if the plea is mala fide or preposterous or vexatious and can be disposed of without going into the facts or is contrary to law or the settled legal position, the Court will not be justified in adopting a hands off policy and allow the game of the defendant to have its sway."

39. Reliance was also placed by the Court on the judgement of this Court in *Zulfiquar Ali Khan v. Straw Products Limited*, 87 (2000) DLT 76 and the judgement of the Bombay High Court in *Mohammad Hayatkhan Karimkhan v. Taramati*, MANU/MH/1494/2010. Relevant paras are as under:

"19. Similarly in *Zulfiquar Ali Khan v. Straw Products Limited* 87 (2000) DLT 76 it was observed that it is a notorious fact that to drag the case, a litigant often takes all sorts of false or legally untenable pleas and it was held that legal process should not be allowed to be misused by such persons and only such defence as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or mala fide based on false or untenable pleas to delay the suit. It was yet further held that the Court is not bound to frame an issue on unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time.

20. The High of Bombay also in *Mohammad Hayatkhan Karimkhan v. Taramati* MANU/MH/1494/2010 held that in order to frame an issue it is necessary to consider whether the plea raised is bona fide or merely raised to delay decision in the matter and which entitles the litigant so raising the plea to remain in possession of the property until adjudication of the issue. It was further held that it is also necessary to see whether there is sufficient material placed on record to frame an issue and to make a reference. The learned Judge observed that it is well settled that no frivolous plea need be a matter of reference and the Court before framing an issue is entitled to see whether such plea is bona fide and has any basis in the material placed on record. Reliance was placed on the judgment of the Division Bench of that Court in *Pulmati Shyamlal Mishra v. Ramkrishna Gangaprasad Bajpai* 1981 Maharashtra Law Journal 321 laying down that it is not correct to assume that the Court is under any obligation to frame and remit the issue of tenancy mechanically, merely on the same being raised in the written statement without judicial satisfaction of its necessity and justification; that remittance of any such tenancy issue and the trial thereof is known to have

become a long winding and time consuming process ensuring the delay for the benefit of the person in possession of the land and which prompts and tempts such persons to take such pleas to perpetuate his unmerited possession. The Bombay High Court further held that the Court has a duty to examine the substance and refuse to frame and remit any issue if the same appears to be demonstrably frivolous and mala fide. Reliance in this regard was placed on the law laid down by the Apex court on Thomas Antony v. Varkey Varkey (2000) 1 SCC 35 though in the context of reference to a Tribunal but holding that the law making reference to the Tribunal mandatory cannot be said to have intended that even a patently frivolous, mala fide and illegal plea taken by a party merely to delay the proceeding and to remain in possession is to be referred to the Tribunal and the statutory provisions have to be read as envisaging a reference only where a bona fide and legally sustainable plea is taken."

40. Useful it would be also to refer to some other paras of this judgement, where the Court relied on certain other judgements of this Court, which are as follows:

22. This Bench also in order dated 12.03.2013 in CS(OS) No. 505/2010 titled as Kavita Chaudhri v. Evenet Singh; order dated 03.04.2013 in CS(OS) No. 791/2011 titled Satish Handa v. Ashok Diwan and order dated 07.11.2012 in CS(OS) No. 2695.2011 titled Satya Gupta v. Guneet Singh held:

(i) that the Court under Order 14 Rule 1(5) is required to, after reading the plaint and the written statement and after examination under Rule 2 of Order 10 and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and to thereupon proceed to frame and record the issues on which the right decision of the case appears to depend;

(ii) that issues are not to be framed on whatsoever pleas are contained in the pleadings but on material pleadings of fact and law and a plea which has no basis in law to stand on and/or a plea qua which law is well settled cannot be said to be a material plea inviting framing of an issue thereon; and

(iii) it cannot be lost sight of that framing of an unnecessary issue invites unnecessary evidence and arguments and which protracts disposal of the suits.

23. Mention may lastly be made of the judgment of the Division Bench of this Court in Vijaya Myne v. Satya Bhushan Kaura 142 (2007) DLT 483 (DB) though in the context of order 12 Rule 6 of the CPC but holding that admissions can even be constructive which can be inferred from vague and evasive pleadings and that admissions can even be inferred from the facts and circumstances of the case. If it were to be held that on every plea, howsoever vague and unsubstantiated, an issue needs to be struck, there can be no effective application of Order 12 Rule 6 CPC as laid down in this judgment.

24. Applying the aforesaid principles, I am unable to agree with the counsel for the applicants/defendants no. 3 to 8. Though undoubtedly the defendants no. 3

to 8 have in their written statement taken a plea of the letting by the defendant no. 2 being on behalf of the defendant no. 1 who is the attorney of the owner of the property and the rent payable by them being less than Rs. 3,500/- per month, this suit in a Civil Court for possession of the premises is barred by Section 50 of the Rent Act but the fact remains;

(i) that the defendants have never in the past taken the said plea; (ii) there is no material before this Court to support the said plea; (iii) it is not as if the applicants/defendants no. 3 to 8 had no opportunity in the past to take such a plea - there have admittedly been a number of complaints and litigations and in which the applicants/defendants no. 3 to 8 claimed to be tenant under the defendant no. 2 only and never claimed to be a tenant under Major Ranbir Singh Rana or the defendant no. 1 or of letting though by the defendant no. 2 being with the consent of Major Ranbir Singh Rana or the defendant no. 1; (iv) even the documents of letting are by the defendant no. 2 only and admittedly do not state the letting by the defendant no. 2 being with the consent of or on behalf of the plaintiff or the defendant no. 1; and, (v) oral evidence contrary to the written document is barred."

41. In the case of *Bhupinder Jit Singh v. Sonu Kumar*, 2017 SCC OnLine Del 11061, a Coordinate Bench of this Court was examining, in a Revision Petition, an order passed by the Trial Court dismissing an Application by the Plaintiff therein under Order XII Rule 6 CPC, for a Decree of possession and mesne profits. The Trial Court had dismissed the Application reasoning that there were no admissions of the Defendant and in fact the Defendant had disputed the Landlord-Tenant relationship and claimed himself to be the owner of the property. In this context, the Coordinate Bench held that the test of admissions under Order XII Rule 6 CPC is on a meaningful reading of the pleadings and if it is found that the pretence made of a defence is not a defence in law and is also in ignorance of Order XV Rule 1 CPC, which provides that if the parties are not found at issue, on any proposition of law or fact, the Court has to pronounce the judgement forthwith. Paras 17 to 19 of the said judgement succinctly highlight that Issues are to be framed only on material propositions of law or fact requiring trial and not on all propositions contained in the pleadings and should not be mechanically framed.

42. Another aspect that needs to be highlighted at this stage is the dicta of the Supreme Court in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512, though in the context of Order VII Rule 11 CPC, that the Court should interpret the provisions of CPC in a manner to save expenses, achieve expedition and a litigation which in the opinion of the Court is doomed to fail, would not be allowed to be used as a device to harass a litigant. Similarly, in *Shipping Corpn. of India Ltd. v. Machado Bros.*, (2004) 11 SCC 168, it was held that if the litigation irrespective of the result benefits neither party to the litigation, it should not be flogged like a dead horse. A Coordinate Bench of this Court in *Maha Singh v. Anand Singh Mann*, (2005) 116 DLT 378, held that Court

is not an idle or docile spectator powerless to bring frivolous litigation to an end.

43. In this background, one needs to examine the provision of Order XII Rule 6 CPC which was amended by Amendment Act of 1976. The Amendment was suggested by the 54th Law Commission Report, enabling a Court to give a judgement on the admission of one party to the litigation, in favour of the other party, as a matter of his/her legal right. In this context, observations from judgements in *Rajiv Srivastava* (supra) and *Karam Kapahi* (supra) become relevant.

44. Relevant portion of the judgement of the Division Bench of this Court in *Rajiv Srivastava* (supra) is as under:

"8. When, however, reference is made to the provisions of Order 12 Rule 6 of the Code of Civil Procedure, it is clear and apparent that such admission could be either from the pleadings of the parties or even otherwise. We may appropriately refer to the decision of the Supreme Court in *Uttam Singh Duggal and Co. Limited v. Union Bank of India* MANU/SC/0485/2000 : AIR 2000 SC 2740. The scope and ambit of Order 12 CPC is stated thus in paragraph 12, which is as under:-

"As to the object of the Order XII, 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 plaintiff 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."

9. A Division Bench decision of this court has laid down the following interpretation of the provision of Order 12 Rule 6 CPC , in the decision of *ITDC Limited v. Chander Pal Sood and Son* MANU/DE/1185/2000: 84 (2000) DLT 337 :-

"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.

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 dehors 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. Even otherwise, without making any reference to the said statement a decree of the nature, in our opinion, could have been passed when the terms and conditions of the registered lease deed are referred to which is a part of the pleadings of the parties...."

45. Relevant portion of the judgement of the Supreme Court in Karam Kapahi (supra) is as under:

"37. The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about "which there is no controversy" (see the dictum of Lord Jessel, the Master of Rolls, in Thorp v. Holdsworth [(1876) 3 Ch D 637] in Chancery Division at p. 640).

38. In this connection, it may be noted that Order 12 Rule 6 was amended by the Amendment Act of 1976. Prior to amendment the Rule read thus:

"6. Judgment on admissions.-Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just."

39. In the 54th Law Commission Report, an amendment was suggested to enable the court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Judges to use it "ex debito justitiae", a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment.

40. If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by "pleading or otherwise in writing" but in Order 12 Rule 6 the expression "or otherwise" is much wider in view of the words used therein, namely: "admission of fact ... either in the

pleading or otherwise, whether orally or in writing".

41. Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see *Charanjit Lal Mehra v. Kamal Saroj Mahajan* [(2005) 11 SCC 279] , SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see Mulla's Commentary on the Code, 16th Edn., Vol. II, p. 2177).

42. In *Uttam Singh Duggal & Co. Ltd. v. United Bank of India* [(2000) 7 SCC 120] this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment."

46. In *A.N. Kaul* (supra), the Court while examining the impugned order therein, dismissing the Application under Order XII Rule 6 CPC, observed that the order was faulty and without considering the law laid down in the judgements in *Ashoka Estate* (supra), *Bhupinder Jit Singh* (supra) and *Kawal Sachdeva* (supra).

47. The plea set up by Respondent No. 1 would be required to be examined on the anvil of the aforementioned judgements. Trial Court dismissed the Application on two fold grounds. In so far as the plea of adverse possession is concerned it is obvious that there is a grave error committed by the Court. Firstly, this plea was not available to Respondent No. 1 in law and secondly it was neither pleaded nor argued by Respondent No. 1. Learned counsel for Respondent No. 1 candidly admitted during the hearing of the Petition that this is an error in the impugned order and did not press the plea of adverse possession.

48. Coming to the defence set up by Respondent No.1, disputing the ownership of the Petitioner, in my view, the same is only with a view to prolong and protract the litigation and continue in unauthorized possession. In the Suit bearing CS(OS) No. 2932/2011 filed by the Petitioner in this Court, one of the question was with respect to the title of the Petitioner to the Suit Property, which was being contested by Defendant Nos. 1 to 3 therein. Petitioner had brought on record the entire chain of documents being Registered Sale Deeds to show how the suit property exchanged hands and finally Petitioner acquired the title, through a duly executed Registered Sale Deed in its favour. The Court decreed the Suit, after it was proved, by leading evidence, that suit property was sold by DLF Housing and Construction Pvt. Ltd. in favour of Jwala Properties, which sold the property to one Ms. Veena Goel and she sold the property to Mr. M.S. Verma. Petitioner, through duly executed Sale Deeds purchased the suit property from Mr. Verma. Defendants 1 to 3 were proceeded ex-parte and Defendant No. 4 who is Respondent No. 2 herein, took a definite stand that it did not want to contest the suit. A categorical finding was given by the Court in para 62 of the judgement that the Plaintiffs were the lawful owners of the Suit Property.

49. The imperative is that it is the Petitioner has a clear title to the Suit property by virtue of a Court Decree, which is unchallenged. Six years have passed from

the passing of the Decree and no claim has been made against the suit property by any legal heir of Ms. Goel, assuming there is one. Petitioner had successfully proved that Mrs. Veena Goyal sold the suit property to Mr. M.S. Verma vide Sale Deed dated 15.11.1962, registered on 19.11.1962, Exhibit PW-1/7. Relevant para showing the contention of the Petitioner which found favour with the Court is as under:-

"60. Mr. N.K. Kaul, learned senior counsel for the plaintiffs, submits that the plaintiff has filed the entire chain of documents to show that the suit property bearing No.K-1, Hauz Khas Enclave, New Delhi, was purchased by plaintiff no.5 company by way of a Registered Sale Deed, which has been exhibited as Exhibit PW-1/4. Mr. Kaul further submits that the documents placed on record would show that the plaintiff is in possession of the entire chain of documents. The first Sale Deed was executed on 22.2.1960 by DLF Housing and Construction Private Limited in favour of Jwala Properties, Exhibit PW-1/9. Jwala Properties then sold the property to one, Mrs. Veena Goyal, vide Sale Deed dated 24.1.1962, registered on 9.2.1962 (Exhibit PW-1/8), and Mrs. Veena Goyal sold the suit property to Mr. M.S. Verma vide Sale Deed dated 15.11.1962, registered on 19.11.1962 (Exhibit PW-1/7). Thereafter the said, Mr. M.S. Verma, sold the suit property to plaintiff no. 5. Mr. Kaul further submits that upon purchase of the suit property Mr.M.S. Verma had addressed letters dated 8.10.1973 to the tenants, being Exhibit PW-1/12 and Exhibit PW-1/13, and thereafter rents were, received by the plaintiffs from the tenants, which are reflected in the ledgers, being Exhibit PW-1/14. Senior counsel further submits that the plaintiffs thereafter made a request to the Municipal Corporation of Delhi, vide letter dated 22.11.1973 (Exhibit PW-1/10), for mutation of the suit property in their name. Information was also given to the Income Tax Department by submitting Form No.37-G (Exhibit PW-1/15). The Income Tax Department also addressed a letter to the plaintiff.

61. I have heard learned counsel for the plaintiffs and defendant no.3, and also perused the Affidavits by way of evidence filed by PW-1 and PW-2 and the material documents placed on record. The evidence of PW-1 and PW-2 has not been rebutted."

50. In view of the clear finding in the judgement that Mrs. Goel had sold the property in 1962, the defence of Respondent No. 1 that the owner of the property continues to be Mrs. Goel and that the Petitioner has no title is an illusory one, to say the least and cannot be sustained. In this background, assuming that the trial was to proceed, it would be only flogging a dead horse and protract the litigation. This would result in Respondent No. 1 getting undue advantage of continuing in unauthorized possession and the Petitioner being deprived of the fruits of the decree, passed six years ago, in its favour.

51. Thus, in my view the plea set up by Respondent No. 1 does not invite even framing of an issue, leave alone a full fledged trial and the Trial Court ought to have allowed the Application under Order XII Rule 6 CPC. The reasoning of the

Trial Court to dismiss the Application that the ownership of the Petitioner is disputed, is in my view, totally faulty and flawed and in the teeth of the judgements mentioned above, circumscribing the parameters of deciding an Application under Order XII Rule 6 CPC.

52. It would be important to deal with the other argument addressed by learned counsel for Respondent No. 1 that the Respondent No. 1 was not a party to CS(OS) No. 2932/2011. In my view this argument is without merit. Claim of Respondent No.1, can be said to be, at the highest, based on the alleged ownership of Ms. Goel and once the Court has held that she had sold the property, only she could have challenged the said finding. Nobody has come forward in these many years to assail the decree on her behalf. Respondent No.1 is laying no claim to title and thus once the title of the property stands decided, Respondent No.1 cannot take a stand that a decree vesting title in the Petitioner shall be meaningless qua the property which Respondent No.1 continues to occupy.

53. The Impugned order is thus set aside and the Application of the Petitioner under Order XII Rule 6 CPC is allowed. Petitioner is entitled to a Decree for possession forthwith.

54. A decree is accordingly passed in favour of the Petitioner against Respondent No. 1 for recovery of possession of the premises being servant quarters on second floor of the servant quarter block, above the garage, having an area of about 120 square feet in property bearing No. K-1 Hauz Khas Enclave, New Delhi.

55. As regards the claim for mesne profits the Trial Court will conduct an inquiry under Order XX CPC. Parties shall accordingly appear before the Trial Court on 14.10.2020.

56. No order as to costs.