

IN THE COURT OF MS. POOJA JAIN, DISTRICT JUDGE-03
EAST DISTRICT, KARKARDOOMA COURT COMPLEX, DELHI

CS No.30/24

SMT. MEENU VASHIST

..... PLAINTIFF

Vs.

SH. RAJAT SHARMA

..... DEFENDANT

16.01.2025

ORDER

Vide this order I shall dispose of an application under Order XII Rule 6 read with section 151 of CPC filed on behalf of plaintiff.

1. The brief facts of the case are that the plaintiff is a widow lady and is the sole owner in possession of several properties including the suit property i.e. built up First Floor and Second Floor at backside with roof rights (i.e. upto ceiling level) measuring area 155 sq. yds (approx.) which is part of property no. C-14, situated at the Abadi of Madhu Vihar in the area of Village Mandawali Fazalpur Illaqa Shahdara, Delhi-110092 which was purchased by husband of plaintiff late Sh. Deepak Vashishth @ Deepak from previous owner Sh. Amar Chand. The husband of plaintiff late Sh. Deepak Vashishth @ Deepak died intestate on 05.05.2021 leaving behind his legal heirs i.e. plaintiff and her daughter Alisha Vashishth. Alisha Vashishth executed a registered Relinquishment Deed dt. 08.12.2021 in favour of plaintiff. Plaintiff averred that she was going through mental and emotional turmoil owing to her

husband's demise pursuant to which her assets and estates was becoming cumbersome. It is further averred that defendant who used to call the plaintiff as his 'Mami' approached her, in order to grab her properties, with mala fide intentions to take care of her and deal with the suit property along-with other properties. Plaintiff entrusted the defendant to take care of her and manage certain properties and plaintiff also authorized the defendant to sell the properties including the suit property subjected with her due permission and consent and subjected to the receipt of consideration amount in the name of the plaintiff through cheque/DD which is mentioned in the General Power of Attorneys for four different properties. Plaintiff deceived the defendant and executed four General Power of Attorneys in his favour for four properties which are as follows:

- a. Property no. C-28, Madhu Vihar, village Mandawali Fazalpur, Shahdara, Delhi-92.
- b. Property no. C-37, Madhu Vihar, village Mandawali Fazalpur, Shahdara, Delhi-92.
- c. Property no. H-48, South Extension-I, New Delhi-110049.
- d. Property no. C-14, Madhu Vihar, village Mandawali Fazalpur, Shahdara, Delhi-92.

It is further averred that plaintiff executed the GPA dt. 24.11.2022 in respect of built up First Floor and Second Floor at backside with roof rights (i.e. upto ceiling level) measuring area 155 sq. yds (approx.) which is part of property no. C-14, situated at the Abadi of Madhu Vihar in the area of Village Mandawali Fazalpur Illaqa Shahdara, Delhi-110092.

2. It is averred that when the plaintiff came to know that defendant is trying to create third party interest by selling the suit property and other

properties of plaintiff without her permission and intimation, then plaintiff approached the defendant for cancellation of aforementioned Power of Attorney. Thereafter, cancellation of GPA executed between the defendant and the plaintiff on 08.12.2022 and further on 30.01.2023. Plaintiff also issued public notice in national newspaper on 04.02.2023 and 05.02.2023 stating that plaintiff is under process of getting the four General Power of Attorneys including the General Power of Attorney in respect of the suit property cancelled. Defendant in order to extort the plaintiff, lodged a frivolous FIR no. 44/2023 against her and alleging that an amount of Rs.1 crore was paid by the defendant with respect to the sale of the aforementioned properties. Whereas, said amount was neither with respect to any such sale of the above-said properties nor any transaction exchanged between them. Rather defendant only used the account of the plaintiff for taking the money in cash and pursuant to the amicable relations with the defendant, plaintiff allowed the defendant to use her bank accounts to deposit the amount of Rs.25 lacs on 07.01.2023 which was withdrawn and returned to the defendant on the very same day. Further an amount of Rs.25 lacs was transferred to plaintiff's account from 09.01.2023 to 11.01.2023 in different branches which was also duly returned to the defendant on the same dates which is evident from the bank statements. Defendant also declared that all the amounts deposited by the defendant in the bank account of the plaintiff have been duly paid back to him in cash. Thus, defendant has no right and title to deal with the suit property in any manner as the rights has already been cancelled by the plaintiff. Defendant has no right to deal with the suit property or retain the possession of the demised premises and his license to take care of the property of the plaintiff stand already cancelled in view of cancellation of GPAs. However, defendant has illegally retained the

possession of the same i.e. Second Floor at backside with roof rights (i.e. upto ceiling level) measuring area 155 sq. yds (approx.) which is part of property no. C-14, situated at the Abadi of Madhu Vihar in the area of Village Mandawali Fazalpur Illaqa Shahdara, Delhi-110092 and is not handing over the possession of the premises to the plaintiff. In the last week of July, 2023, defendant had also taken the forcible possession of first floor of the property in question whereas some part of first floor portion is under the possession of the plaintiff. It is averred that defendant is the unauthorized occupant/trespasser with respect to the part of first floor and entire second floor of the property bearing no. C-14, situated at the Abadi of Madhu Vihar in the area of Village Mandawali Fazalpur Illaqa Shahdara, Delhi-110092. Plaintiff also sent a legal notice dt. 20.11.2023 to the defendant but the defendant failed to comply and instead started threatening the plaintiff for creating third party interest in the suit property. Thus, it is prayed that (A) a decree of possession directing the defendant to vacate and handover the peaceful possession of property i.e. part of first floor and entire second floor which is part of property no. C-14, situated at the Abadi of Madhu Vihar in the area of Village Mandawali Fazalpur Illaqa Shahdara, Delhi-110092 (B) a decree of permanent injunction thereby (i) restraining the defendant from forcibly trespassing into the portion of the first floor forming part of property no. C-14 (ii) from creating any obstruction in the peaceful use and possession of the plaintiff in respect of the portion of the first floor forming part of property no. C-14 in any manner whatsoever (iii) from creating any third party interest in respect of the first and second floor of property no. C-14, situated at the Abadi of Madhu Vihar in the area of Village Mandawali Fazalpur Illaqa Shahdara, Delhi-110092 (iv) restraining the defendant from acting or representing himself as GPA holder of

the plaintiff for the property no. C-14, situated at the Abadi of Madhu Vihar in the area of Village Mandawali Fazalpur Illaqa Shahdara, Delhi-110092 which was cancelled on 08.12.2022 and on 30.01.2023 in any manner whatsoever. (v) restraining the defendant from carrying out any illegal construction on the property i.e. first and second floor of property no. C-14, situated at the Abadi of Madhu Vihar (vi) from acting or dealing in respect of the property i.e. built up First Floor and Second Floor at backside with roof rights (i.e. upto ceiling level) measuring area 155 sq. yds (approx.) which is part of property no. C-14, situated at the Abadi of Madhu Vihar in the area of Village Mandawali Fazalpur Illaqa Shahdara, Delhi-110092 in any manner whatsoever (C) a decree of mandatory injunction to direct the defendant to remove illegal construction carried out by him over the suit property i.e. part of the first floor and second floor of property no. C-14, situated at the Abadi of Madhu Vihar (D) a decree of Rs.11,00,000/- as damages/use and occupation charges for the demised premises till 18.11.2023 along-with interest @ 24% per annum and Rs.3300/- per day as use and occupation charges of the said property w.e.f. 20.11.2023 till its vacation to the plaintiff along-with the cost of the suit.

3. Defendant filed his written statement and contended that suit is not maintainable as no cause of action arose against the defendant hence the suit is liable to be dismissed under Order 7 Rule 11 of CPC and plaintiff has no right, title and interest in the suit property. It is further averred that suit is a counter blast to the FIR no. 44/23 PS Madhu Vihar lodged by the defendant. On merits, it is submitted that the plaintiff with her free will, consent and without any pressure transferred the suit property in the name of the defendant by way of execution of GPA dt. 24.11.2022 after taking the consideration

amount from the defendant. Defendant had paid Rs.60 lacs to the plaintiff from his bank and further Rs.40 lacs in cash and thereafter, the defendant has become the absolute owner of the suit property and enjoying its possession since 24.11.2022. It is contended that at present defendant is in possession of only second floor of the suit property and the first floor of the suit property is in possession of the plaintiff. Defendant also averred that on 04.02.2023 the plaintiff and her son-in-law along-with their associates came at the suit property and stolen the electronic goods of the defendant amounting to Rs.40 lacs which were lying in the suit property and an FIR no. 44/23 in PS Madhu Vihar u/s 448/380/34 IPC. Defendant further denied all the other allegation as alleged by the plaintiff in the plaint and prayed for dismissal of the suit with costs.

4. Thereafter an application under Order XII Rule 6 read with section 151 of CPC was filed by the plaintiff on 19.10.2024, for pronouncement of judgments on admissions made by defendant in his written statement. According to plaintiff, defendant in reply to para no.2 of plaint, the defendant had admitted the GPA dt. 24.11.2022 executed between the plaintiff and the defendant. Defendant further admitted in para 2 of reply on merits that at present defendant is in possession of second floor of the suit property. It is submitted that plaintiff had executed the GPA dt. 24.11.2022 in favour of defendant only for the management, supervise, let-out and to transfer the property on behalf of plaintiff after receipt of full and final consideration amount in her name through cheque and DD and mere execution of GPA does not amount to transfer the property in the name of the defendant. It is further submitted that nowhere in the GPA dt. 24.11.2022 hklas been stated that the

said GPA has been executed in exchange of any consideration amount between the defendant and the plaintiff. Even on 31.01.2023, a deed of cancellation of GPA was executed by the plaintiff by which the defendant has no right to deal with the suit property and his license to take care of the property of plaintiff stand already cancelled. It is submitted that the defendant in his written statement has specifically admitted that the GPA dt. 24.11.2022 has been executed between the plaintiff and the defendant and no other document has been executed by the plaintiff in favour of the defendant with respect to the suit property and upon such admission the plaintiff is entitled for the decree on the admissions made by the defendant in his written statement. It is clear that the entire case of the plaintiff has been admitted by the defendant and it is also apparent from the written statement itself that the plaintiff is the absolute owner of the suit property. Hence, it is prayed to allow the present application under Order 12 Rule 6 r/w section 151 of CPC and pass a preliminary decree of possession and permanent injunction in favour of plaintiff with respect to the second floor of the suit property in view of the unequivocal admissions made by the defendant in the written statement.

5. Reply to the aforesaid application was filed on behalf of defendant wherein it is stated on behalf of defendant that the defendant has nowhere admitted the claim of the plaintiff as such the application of the plaintiff is liable to be dismissed with cost. It is averred that the defendant has nowhere admitted the claim of the plaintiff entitling the plaintiff to move the present application. It is further submitted that plaintiff has misread and misconceived the plea taken by the defendant in his written statement, therefore, the application of the plaintiff is liable to be dismissed. It is further submitted that

admission should be clear, unequivocal and unambiguous. It is also submitted that defendant has not admitted anything in his written statement, which can be treated and termed as clear, unequivocal and unambiguous, therefore, the application of the plaintiff is liable to be dismissed. The defendant denied the rest of the averments made in the application under Order 12 Rule 6 CPC.

6. Arguments heard on behalf of the parties and perused the material available on record.

7. Before appreciating the rival contentions of the parties, it is necessary to refer the relevant provisions of law i.e Order XII Rule 6 of the Civil Procedure Code and Section 58 of the Indian Evidence Act which provides as under:-

ORDER XII RULE 6 -

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

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

Section 58 of the Indian Evidence Act provides that:

“58. Facts admitted need not be proved-No fact need to be proved

in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

The aforesaid Rule was amended by Act 104 of 1976, by which several amendments were made to the Code of Civil Procedure, 1908. Earlier to 1976 amendment, judgment on admissions was confined only on application in writing. By virtue of the amendment whether admissions are oral or in writing, court is empowered at any stage of the suit to give judgment on such admissions.

8. The Apex Court in case of ***Uttam Singh Dugal and Co. Ltd. vs. United Bank of India 2000 (4) R.C.R. (Civil) 89*** observed as under :-

“10. 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 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.”

9. The object of the provisions of Order XII Rule 6 of the Code was also interpreted in the judgment delivered in case of ***M/s Puran Chand Packaging Industrial Pvt. Ltd. vs. Smt. Sona Devi and another, 2009 (2) C.C.C. 39*** & the Apex Court in ***Sona Devi's*** case (supra), made the following observations :-

*9. A perusal of the aforesaid provision would show that before a decree on the basis of admission in the pleadings can be passed, the admission must be made by the defendant or a party to the proceedings in an unequivocal, unambiguous manner. In other words the admission should not be vague or equivocal. Another point which has to be borne in mind while passing a judgment on the basis of an admission is that the document is to be read as a whole and the Court is not to take out one or two sentences so as to treat it as an admission. Moreover passing of a judgment on this basis by the Court is a matter of discretion and not a matter of course. Reliance in this regard is placed on ***Maniisha Commercial Ltd. Vs. N.R.Dongre and Anr. AIR 2000 Delhi 176.****

10. In case of “**Charanjit Lal Mehra and Ors. vs Smt. Kamal Saroj Mahajan and Anr.**” AIR 2005 SC 2765, the Hon'ble Supreme Court has held that order 12 Rule 6 CPC is enacted for the purpose to expedite the trials and if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute of the matter, then in such a case, in order to expedite and dispose of the matter such

admission can be acted upon.

11. In the present case, plaintiff has contended that she is the sole, absolute and exclusive owner in the possession of several properties including the suit property. Plaintiff has further contended that defendant has admitted the GPA dated 24.11.2022 executed between the plaintiff and defendant and defendant is in possession of second floor of the suit property. Plaintiff has further contended that defendant has also admitted during his statement recorded u/o 10 CPC on 17.08.2024 that apart from the second floor he is also in possession of five shops located at the first floor of the suit property. Plaintiff has also contended in the written synopsis that she has executed the GPA dated 24.11.2022 in favour of the defendant only for the management, supervise, let-out and to transfer the property on behalf of the plaintiff after receipt of full and final consideration amount in her name through Cheque and DD. Plaintiff has further contended that mere execution of GPA does not confer any title or create any interest in the suit property. She further contended that neither any sale deed has been executed nor any action pursuant to execution of GPA dated 24.11.2022 has been taken which may confer the title of the suit property to the defendant and nowhere it has been stated in the GPA dated 24.11.2022 that the GPA has been executed in exchange of any consideration amount between the defendant and the plaintiff. On the other hand, defendant has submitted that plaintiff with her free will, consent and without any pressure transferred the suit property in the name of the defendant by way of execution of GPA dated 24.11.2022 after taking the consideration amount from the defendant. Defendant has further submitted that he has paid Rs. 60 lakhs to the plaintiff from his bank account and further Rs. 40 lakhs had

been paid to the plaintiff in cash and thereafter the defendant has become the absolute owner of the suit property. Defendant has further submitted that defendant is in possession of second floor of the suit property and first floor of the suit property is in possession of the plaintiff. It is pertinent to mention here that plaintiff in the replication has submitted that plaintiff allowed the defendant to use her bank accounts to deposit the amount of Rs. 25 lakhs on 07.01.2023. however, the same was withdrawn and returned to the defendant on the same very day. Plaintiff has further submitted in the replication that an amount of Rs. 25 lakhs was transferred to the plaintiff's account on 09.01.2023 to 11.01.2023 in different tranches and the said amount was returned to the defendant on the same dates as is evident from the bank statements. Moreover, it is worthwhile to mention here that plaintiff in her written synopsis filed on record has mentioned in para no.7 that plaintiff has executed the GPA dated 24.11.2022 in favour of the defendant only for the management, supervise, let-out and to transfer the property on behalf of the plaintiff **after receipt of full and final consideration amount in her name through Cheque and DD**. The same creates doubt in the submissions of the plaintiff. In view of above, there is inconsistency in submissions of the plaintiff and there is no clear admission on the part of the defendant.

12. Further, perusal of written statement, shows that defendant has admitted execution of GPA dated 24.11.2022 but the defendant denied to have committed any fraud upon the plaintiff. Defendant is contending that he is still in possession of the suit property. Hence, there is no clear admission on behalf of the defendant to the case of plaintiff. It is settled law that u/o 12 rule 6 CPC, a decree can be passed or a suit can be dismissed when admissions are clear and unambiguous and no other interpretation is possible. It is also settled law that

power to pass a judgment u/o 12 rule 6 CPC on admissions is discretionary and cannot be claimed as a matter of right, and said power should be exercised only when specific clear and categorical admission of fact and documents are on record, otherwise court can refuse to invoke the power.

13. Moreover, from perusal of the written statement, there does not appear to be clear and unambiguous admission on the part of the defendant. The issue as to whether the defendant has paid the consideration amount to the plaintiff in pursuant of sale of suit property and any fraud is committed by the defendant upon the plaintiff and as to any harm and loss is committed to the plaintiff by the defendant is subject matter of trial. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Hence, to find the actual truth of the case, evidence is required to be adduced during trial to prove the claim of both the parties. In view of above, there is no clear admission is made out on behalf of the defendant. Hence, the present application u/o 12 rule 6 CPC filed by the plaintiff is dismissed.

Typed to the dictation directly,
corrected and pronounced in
open court on 16.01.2025

(Pooja Jain)
District Judge-03,
East/KKD Courts, Delhi.