

**IN THE COURT OF SH. RAHUL BHATIA
DISTRICT JUDGE 01 - SOUTH EAST DISTRICT SAKET
COURTS, NEW DELHI.**

CS DJ 1-19

Sh. Bhupender Gupta

S/o Late Sh. Harish Chand
R/o 137, Main Bazar, Badarpur,
New Delhi-110044

.....Plaintiff

Vs.

1. Sh. Sudarshan Kumar

S/o late Sh. Harish Chand
R/o 137, Main Bazar, Badarpur,
New Delhi-110044.

2. Sh. Rakesh Kumar

S/o late Sh. Harish Chand
R/o 137, Main Bazar, Badarpur,
New Delhi-110044.

.....Defendants

<i>Date of Institution</i>	:	<i>03.01.2019</i>
<i>Date of Reserving order</i>	:	<i>08.08.2024</i>
<i>Date of Order</i>	:	<i>06.09.2024</i>

ORDER

1. Today the matter has come up for orders on an application under Order XII Rule 6 CPC filed by the plaintiff for passing of a judgment on the admissions made by the defendants in their written statement.
2. The plaintiff has filed the present case for recovery of

possession, damages, permanent injunction as well as mesne profit with respect to part of property bearing no. 137, Main Bazar, Badarpur, New Delhi-110044 shown in red colour in the site plan marked as ABCD and EFGH. .

3. The case of the plaintiff is that the above said property was owned by the father of the parties i.e. late Sh. Harish Chand who expired on 21.03.1990. It is stated that after the death of the father of the parties, daughters and wife of late Sh. Harish Chand have relinquished their respective shares in favour of the three sons of late Sh. Harish Chand i.e. the plaintiff and the defendants in the present case, vide registered relinquishment deed dated 06.01.1994. It is further stated that the parties to the suit decided to partition the above said property and the property was partitioned vide partition deed dated 18.10.2002. It is stated that in the said partition, the plaintiff got the back side portion of the above said property which opened in the back lane without any footfall and the defendants got the front portion of the said property opening on the main road of the market. It is stated that in the year 2008, the plaintiff filed case against the then tenants for eviction of tenanted shops. After the filing of the case, the defendants approached the plaintiff and took over the possession of two spaces out of the share of the plaintiff in the partitioned property shown in red colour in the site plan being a room ABCD (7' 9" X 12' 10") behind the tenanted shop and hall EFGH (8' 5" X

21'3") in lieu of allowing the plaintiff to keep four boxes and one suitcase before the stairs adjacent to the defendants shop to showcase his articles for sale. In the year 2015, the tenanted shop of the plaintiff was evicted by the order of the Hon'ble High Court of Delhi. The defendants removed the boxes and suitcase of the plaintiff as the plaintiff had access to the main road and now also denied to give back two portions of the plaintiff's property which was being used by the defendants since 2008. The plaintiff repeatedly requested the defendants to hand over the peaceful possession of the portion of the property being occupied by the defendants. As the defendants did not comply with the repeated requests of the plaintiff, he was constrained to file the present suit.

4. On issuance of summons, the defendants appeared and filed their separate written statements.
5. In his written statement, the defendant no. 1 has stated that the suit is an abuse of the process of law. It is admitted by the defendant no. 1 that the property was exclusively owned by the father of the parties and he has also admitted that the sisters of the parties relinquished their share in favour of the parties to the suit. The execution of the partition deed dated 18.10.2002 is admitted by defendant no. 1, but it is stated that the said partition deed cannot be given effect to as it is an unregistered document. It is

further averred that the said partition deed was only executed for the purpose of evicting the tenants in the property and no rights were decided by the said deed. Defendant no. 1 further claims to have purchased the share of defendant no. 2 in the said property vide agreement to sell, GPA, affidavit etc dated 08.01.2018.

6. Defendant no. 2 in his written statement has submitted that he is not in possession of any portion of the property. He has stated that the documents dated 08.01.2018 were fraudulently prepared by the defendant no. 1 and that he has already issued publication in Rashtiya Sahara newspaper declaring the above said GPA as null and void. He has also admitted the execution of the partition deed dated 08.10.2002, however, he has stated that no physical partition took place after the said partition deed.
7. On the filing of the written statement of the defendants, the plaintiff filed the present application stating that the defendants have admitted the execution of the partition deed and only flimsy grounds are taken to deny the effect of the same. It is further stated that the version of the defendant no. 1 that the partition deed was only executed for the eviction of the then tenants is negated on the face of the record as the partition deed was executed in 2002 and the eviction suit was only filed in 2008. Further, it is stated that the defendant no. 1 has stated in his written statement

that he purchased the share of the defendant no. 2 in the suit property vide documents dated 09.01.2018 and the said documents are premised on the fact of the actual partition having taken place. It is stated that as per the said documents, the defendant no. 2 has transferred his one third divided share in respect of the property and the divided share of defendant no. 2 is mentioned in those documents. It is further submitted that defendant no. 2 has also not denied the execution of the partition deed. On these submissions, Ld. Counsel for plaintiff has submitted that clear admissions as to the execution of the partition deed and the partition of the suit property in the already identified manner have been made.

8. Per contra, Ld. Counsel for defendant no. 1 has submitted that no clear admissions have been made by the defendants. He has submitted that defendant no. 1 has denied the execution of the partition deed dated 18.10.2002 and has clearly explained in his written statement the circumstances in which the said partition deed was signed by him. It has been reiterated by defendant no. 1 that it has been explained in the written statement that the said partition deed was only executed for the limited purpose of eviction of the tenant. It is further stated that the defendant no. 1 is in possession of the first floor portion since 1982 and no such issue was earlier raised by the plaintiff. Ld. Counsel has further submitted that the alleged admissions made by

the defendant no. 1 are not clear or unambiguous and therefore no decree under Order XII Rule 6 CPC can be passed in the present case. He has relied upon the following judgments:-

(i) Uttam Singh Duggal & Company Ltd. Vs. United Bank of India & Ors (2000) 7 SCC 120.

(ii) Parivar Seva Sansthan Vs. Dr. Veena Kalra AIR 2000 DEL 349.

(iii) Dena Bank Vs. M/s Bindal Construction (Pvt Ltd) ILR 2022 DHC.

(iv) State Bank of India Vs. M/s Midland Industries & Ors AIR no. 1988 DEL 153.

9. Ld. Counsel for defendant no. 2 has supported the arguments of defendant no. 1 and has reiterated the background of execution of the partition deed. He has further submitted that he is not in possession of any portion of the property as the same was fraudulently taken by the defendant no. 1 through documents dated 08.01.2018.

10. Heard. Perused the record.

11. In the present case, it is an admitted position of all the parties that the property was originally owned by the father of the parties and after relinquishment of shares by the other legal heirs of the deceased, only the parties to the suit were entitled to any share in the property. Further, it is an

admitted position of both the defendants that the partition deed dated 18.10.2002 was executed between the parties.

12. The difference between facts canvassed by the parties emerges from the circumstances in which the said partition deed was executed. On one hand, the plaintiff has submitted that the partition deed was executed between the parties and was acted upon, whereas the defendants have stated that the said partition deed was only executed for the eviction of the tenant and no effect was given to the same.

13. The partition deed was executed in the year 2002, whereas the eviction suit against the tenant was only filed in the year 2008. There is no averment in the written statement of any of the defendants as to why the eviction suit was filed in the year 2008 when the only purpose of executing the partition deed was the eviction of the tenant. Thus, the version of the defendants that the partition deed was only executed for the eviction of the tenant is not borne out from the record but is in fact in contradiction of the record as well as pleadings of the defendants themselves.

14. Further, the defendant no. 1 has claimed higher share in the property of the deceased father of the parties on the basis of agreement to sell, GPA etc dated 08.01.2018 from defendant no. 2. A perusal of the said document would reveal that the defendant no. 1 purchased 1/3rd divided

share of defendant no. 2 in the property and the said share has been demarcated in those documents. The agreement to sell dated 08.01.2018 further reveals that defendant no. 2 obtained one-third portion of the said property by virtue of deed of partition executed between the parties on 18.10.2002.

15. Thus, what is clear from the pleadings of the defendant no. 1 and the documents relied by him is that the defendant no. 1 is claiming a higher share in the property based upon the deed of partition, which he is denying in the present case. Further, the admission as to the execution of the partition deed is not just present in the written statement of defendant no. 1 but is also present in the documents which the defendant no. 1 is relying upon. Therefore, it is clear that the defendant no. 1 cannot take two divergent stands as to the genuity of the partition deed. Thus, once the defendant no. 1 is relying upon the partition deed for acquisition of share of defendant no. 2, he cannot deny the effect of the same against the claim of the plaintiff.

16. The reliance of the plaintiff on **Uttam Singh Duggal (supra)** is misplaced as the defendant no. 1 has categorically admitted the partition deed and has taken benefit out of it by purchasing the share of defendant no. 2 on the basis of the very same partition deed. Thus, the defendant no. 1 cannot now claim that the partition deed was not duly

executed or was executed for purposes other than those mentioned in the same.

17. As far as defendant no. 2 is concerned, he has stated that he is not in possession of any portion of the property. Further, he has also not denied the execution of the partition deed.

18. Thus, based upon the above discussion, it is clear that both the defendants have admitted the execution of the partition deed and their only defence is as to the background circumstances of the execution of the same. The said defence is contrary to their own documents and as such has no substance. The necessary corollary of the above discussion is that there are sufficient admissions made by the parties qua the right of plaintiff to the property claimed in the present case.

19. However, there is no admission qua the rent of the suit property by any of the defendants and as such no decree for recovery of the amount claimed in the plaint can be passed without the parties adducing evidence on the same.

20. Thus, based upon the above observations, the application under Order XII Rule 6 CPC filed by the plaintiff is allowed and the defendants are directed to hand over the vacant peaceful physical possession of two portions of property bearing no. 137, Main Bazar, Badarpur, New

Delhi-110044 as shown in red colour in the site plan annexed with the plaint to the plaintiff within 30 days.

21. Defendants and his agents are further restrained from creating any third party interest/title and delivering/handing over the possession of the suit property to any other person except the plaintiff.

22. Decree sheet be prepared accordingly.

**Announced in the open court
06.09.2024**

**(RAHUL BHATIA)
District Judge 01(SE),
Saket Courts, New Delhi.**