

**IN THE COURT OF SH. RAMESH KUMAR-II,
ADDITIONAL DISTRICT JUDGE-01, SHAHDARA
DISTRICT, KARKARDOOMA COURTS,
DELHI**

CS No. 756/2017

In the matter of:-

Manish Singh

.....Plaintiff

Vs.

Punjab National Bank

.....Defendant

ORDER

Vide this order I shall dispose off the application of the plaintiff under Order XII Rule 6 read with section 151 of the Code of Civil Procedure (for short "CPC") for passing a decree of possession in his favour.

The facts necessary for disposal of this application are that the plaintiff has filed the present suit for recovery of possession and damages/mesne profit against the defendant thereby alleging that the grandmother of the plaintiff Smt. Sukhiya Devi (now deceased) was the absolute owner of the entire premises bearing no. IX/56, Shyam Block, Kailash Nagar, Gandhi Nagar, Delhi-110031 and the defendant was inducted as a tenant by the deceased grandmother of the plaintiff through a registered lease deed dated 28.12.2010 pertaining to the entire ground floor portion and half first floor portion, as shown in red colour in the site plan (hereinafter be referred as "suit property") and according to the terms and conditions of lease deed, the rate of rent was agreed Rs.39,675/- besides other charges and the lease deed was executed for five years, commencing from 01.07.2010 to 30.06.2015. That the defendant bank paid lease amount of

Rs.45626/- per month and is regularly paying the monthly lease amount. It is further alleged that the grandmother of the plaintiff expired on 17.11.2015 and during her lifetime she had executed a registered Will dated 23.04.2009 before the office of Sub Registrar concerned and the present suit is being filed by the plaintiff in the capacity of SPA on behalf of all the legal heirs of late Smt. Sukhiya Devi. It is further alleged that the defendant has filed the written statement and has not disputed the initial landlord tenant relationship; rate of rent; execution of registered rent agreement but challenged the ownership of plaintiff qua the suit premises. This plea is not available with the defendant as section 116 of Indian Evidence Act says that "No tenant of immovable property of person claiming through such tenant shall during the continuance of the tenancy, be permitted to deny the landlord of such tenant had at the beginning of the tenancy". Accordingly, a prayer is made to pass a decree of possession with respect to the suit property in favour of the plaintiff and against the defendant.

Written statement was filed on behalf of defendant wherein defendant admitted its tenancy in respect of tenanted premises but challenged the ownership of plaintiff qua the suit premises. It is further stated that the suit of the plaintiff is not maintainable as there is no cause of action ever arisen in favour of the plaintiff and against the defendants, hence the same is liable to be dismissed.

Reply to the aforesaid application was filed on behalf of defendant wherein it is submitted that the present application of plaintiff is not maintainable as the plaintiff himself has not complied with the terms and conditions of original lease dated

27.12.2005 and it is relevant to mention here that as per terms and conditions of lease deed dated 27.12.2005, the grandmother of plaintiff has not sent any notice to the defendant bank and the grandmother of plaintiff had executed further lease deed of five years on 28.12.2010 after completion of original lease deed i.e. from 2005 to 2010, hence as per terms of lease, the plaintiff is bound to execute the lease further for five years i.e. upto 2020. It is further stated that the plaintiff is not entitled to recover the possession of suit property on the basis of lease agreement dated 27.12.2005 as section 26 of Specific Relief Act, the same lease agreement has to be rectified before filing the suit, hence the present application as well as suit filed by the plaintiff are liable to be dismissed.

In the light of admissions, direct or by way of inference, in the written statement, the plaintiff has filed the present application under Order XII rule 6 of CPC read with section 151 of the CPC for passing the Judgment on admission.

I have heard the arguments and perused the record.

During the course of arguments, Ld. counsel for plaintiff argued and submitted that a registered lease deed dated 28.12.2010 was executed between grandmother Smt. Sukhiya Devi (since deceased) and the defendant bank and that the present suit is being filed by the plaintiff in the capacity of Special Power of Attorney on behalf of all the legal heirs of Smt. Sukhiya Devi. Ld. counsel for plaintiff further submitted that the defendant in its written statement has not disputed the landlord and tenanted relationship; execution of registered lease deed; amount of rent and the only defence/plea taken by the defendant is that the lease deed have not been expired and is still continuing

after 30.06.2015 on account of non compliance of clause No. (i) of registered deed by the plaintiff, he is entitled to retain his position over the suit premises. Ld. counsel for plaintiff further submitted that on the contrary, it is duly proved by the plaintiff by documentary evidence that before expiry of lease deed on 30.06.2015, deceased Smt. Sukhiya Devi had sent a legal notice dated 20.05.2015, thereby calling the defendant to handover the peaceful and vacant possession of the suit premises, which was duly reply by the defendant on 30.05.2015 and reply to their reply was also sent by the plaintiff. In view of above grounds, ld. counsel for plaintiff requested to pass a decree of possession in favour of the plaintiff and against the defendant.

On the other hand, Ld. counsel for defendant argued and submitted that Smt. Sukhia Devi executed a Will dated 23.04.2009 in favour of her legal heirs and as per said Will, the legal heirs of Smt. Sukhia Devi namely Km. Neha (sister of plaintiff) and Sh. Veer Singh Thakur (first son of Sukhia Devi) have not signed the SPA in favour of plaintiff to file the present suit against the defendant and while in e-stamp paper of SPA the name of purchased is mentioned as Sh. Vir Singh & Ors., hence the suit is bad for non-joinder of necessary party.

I have considered the submissions made on behalf of both the parties and perused the record.

I have also perused the case laws as relied upon by ld. counsel for plaintiff in support of his averments.

Before appreciating the rival contentions, it is necessary to refer the relevant provision of law i.e Order XII Rule 6 CPC, which reads 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.*

It is well settled principle of law that under Order XII rule 6 CPC, the plaintiff would be entitled to a judgment on admission of facts having been made either in the pleadings or otherwise, whether oral or in writing. In view of the settled law, the requisite conditions which need to be proved for passing a judgment on admission in favour of plaintiff with regard to possession are:

- (a) Existence of landlord-tenant relationship.*
- (b) The rent of the premises in question being more than Rs.3500/- per month.*
- (c) Determination of tenancy by a valid notice sent by the plaintiff to defendant under Section 106 of the Transfer of Property Act.*

13 It is no more res integra that admission need not be made expressly in the pleadings. Even on constructive admissions, court is empowered to proceed to pass a decree in favour of plaintiff. The object of Order 12 Rule 6 is to enable the parties to obtain a speedy judgment at least to the extent of the relief plaintiff is entitled to, on the basis of admission by the defendant.

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.

Now advertng to the aforesaid requirements one by one, the defendant in the present case has not disputed the fact that it is a tenant in the suit premises, but challenged the ownership of plaintiff qua the suit premises on the grounds that the plaintiff is not competent person to file the present suit on behalf of legal heirs of property of Lt. Smt. Sukhiya Devi; that the suit of the plaintiff is not maintainable as the plaintiff has not come with clean hands as he has not disclosed the facts about execution of lease deed dated 27.12.2005, which was registered with Sub Registrar VIII, Geeta Colony, Delhi Vide Book No.1, Volume No.2130 page no.159 to 166, document no.16389, dated 27.12.2005, wherein the land lady Lt. Smt. Sukhiya Devi has converted to lease the property in question for 5+5+5 years (total 15 years i.e. till 2020) commencing from 01.07.2005 on monthly rent of Rs.34,500 with 15% increase every 5 years and also on subsequent execution of fresh lease deed; that the suit of the plaintiff deserve to be dismissed, as all the legal heirs have not filed the present suit, hence the present suit is admittedly bad for mis-joinder of necessary parties to the suit; that the plaintiff has failed to show that the alleged Will dated 23.04.2009 was last and final and the the probate from the competent court of law in

furtherance of the above alleged Will, so the said Will is not legally proved, hence cannot be relied upon in the present suit.

A perusal of plaint shows that the plaintiff claimed that the present suit is being filed by him in the capacity of SPA on behalf of all the legal heirs of Lt. Smt. Sukhiya Devi, as detailed below:-

- a. Sh. Veer Singh Thakur (son);
- b. Sh. Rajesh Thakur @ Raju (son)
- c. Sh. Sher Singh (son) since deceased, survived by:-
 - i. Smt. Sushila Devi (wife)
 - ii. Sh. Manish Singh (son)
 - iii. Sh. Nikhil (son)
- d. Smt. Kusum Lata W/o Sh. Kailash Nath (daughter)
- e. Smt. Prem Lata W/o Sh. Mahinder Singh (daughter)
- f. Smt. Shashi Rani W/o Sh. Amar Singh (daughter)
- g. Smt. Ranjana W/o Sh. Krishan Rathore (daughter).

The plaintiff filed the present suit being SPA of legal heirs of Lt. Sukhiya Devi on the basis of Will dated 23.04.2009 executed by Lt. Sukhiya Devi in favour of her legal heirs.

As per said Will the legal heirs of Lt. Sukhiya Devi are Veer Singh Thakur, Rajesh Thakur @ Raju, Susheela Devi, Manish Singh, Nikhil, Km. Neha, Kusum Lata, Prem Lata, Shashi Rani and Ranjana.

SPA filed by the plaintiff shows that it has not been executed by Km. Neha and Veer Singh Thakur in favour of the plaintiff, who are also legal heirs of Lt. Sukhiya Devi. The plaintiff has not given any explanation in this regard for the reasons best known to him. It appears that the plaintiff himself has not come to court with clean hands. It is not the case of the plaintiff here that he has filed a petition seeking probate of the

Will dated 23.04.2009. Defendant in its written statement has taken preliminary objections that the suit of the plaintiff deserves to be dismissed, as all the legal heirs have not filed the present suit and it is bad for mis-joinder of necessary parties and that the alleged Will dated 23.04.2009 has not been probated from the competent court of law, hence the said Will is not legally proved and cannot be relied upon in the present suit. A clear and specific issue (issue no.3) has already been framed in respect of this contention of the defendant. Therefore, this court is of the opinion that the present case cannot be decided without leading evidence by the parties. Hence, case laws as cited by ld. counsel for plaintiff in support of his averments are not applicable to the facts of the present case.

Therefore, in light of above discussion, the plaintiff is not entitled for judgment in the suit at this stage as there are triable issues involved in the present matter with respect to maintainability of the present suit. The application under order XII rule 6 CPC is accordingly disposed off being not maintainable at this stage.

It is made clear that nothing said herein above shall affect the merits of the case or prejudice the rights of any of the parties.

Application stands disposed off.

(Typed to the dictation directly, corrected and pronounced in open court on 16.02.2023).

**(RAMESH KUMAR-II)
ADJ-01/SHD/KKD COURTS
DELHI**