

**IN THE COURT OF MS. RAVINDER BEDI,
ADDITIONAL DISTRICT JUDGE-02 (SHAHDARA),
KARKARDOOMA COURTS: DELHI.**

RCA DJ No.90/2017

CNR No.DLSH01-003495-2017

**Smt. Dimpi
W/o Sh. Kamal Singh
R/o H. No. B-3, Gali no. 12,
Saboli Bagh,
Delhi-110093.**

.....Appellant

Versus

**1. Smt. Shanti Devi
W/o Sh. Hukum Singh
R/o B-72, Gali No. 5,
Nathu Colony East,
Delhi-110093.**

**2. Sh. Kamal Singh
S/o Sh. Hukum Singh
R/o H. No. B-3, Gali no. 12,
Saboli Bagh, Delhi-110093.**

.....Respondents

Date of Institution of Appeal	:	27.05.2017
Date of reserving order	:	08.08.2022
Date of pronouncement	:	12.09.2022

Appearance:

**Mr. Amjad Khan & Mr. M. Ansari, Id. Counsel for appellant.
Mr. Santosh Kumar Sharma, Id. Counsel for Respondent no. 1.
Mr. Fakhruddin, Id. Counsel for Respondent no. 2.**

O R D E R

1. The challenge by means of the present appeal under Section 96 of CPC is to the impugned Judgment and decree of trial court dated 25.04.2017 whereby the suit of plaintiff Smt. Shanti Devi (Respondent no. 1 herein) was decreed in respect of the possession of the suit property on the basis of the admissions by the defendants.

While during submissions, I have also heard & considered upon the application of the appellant (defendant no. 2 before trial court) under Order 41 Rule 27 CPC during pendency of the appeal.

2. To put succinctly, respondents/plaintiffs, who are the parents-in-law of Appellant had filed a suit for mandatory injunction seeking directions against the Appellant and her husband to hand over vacant peaceful possession of the suit property along with damages /mesne profits @ Rs.20,000/- per month. Plaintiffs stated that defendant no. 1 /Respondent no. 2 was son and Appellant was their daughter in law and they both were residing at the property no. B-3, Gali no. 12, Saboli Bagh, Delhi (hereinafter referred to as 'suit property'). The Plaintiff stated that she was the absolute owner of the suit property after she had purchased the same from her own funds from one Sh. Nathu Singh vide documents executed on 27.05.1988. Plaintiff stated that Appellant and her husband were married in the year 1998. However in the year 2000, the plaintiff had allowed both of them to live in the suit property. In the interregnum period, various disputes arose between the parties and now Plaintiff claimed that Appellant and her husband be restrained from selling or disposing off suit property. The plaintiff also claimed the vacant physical possession of the suit property from Appellant and her husband.

3. In written statement filed by defendant no. 1/son, it was stated that the suit property was a vacant plot in the year 2000 and Defendant no. 1 himself had constructed the same from his own funds. Defendant no. 1 further stated that the suit property was then gifted to him by the plaintiff being her son and all maintenance regarding the same was being done by the defendant no. 1 from time to time. Defendant no. 1 therefore did not dispute the ownership of the suit property of plaintiff. He merely claimed that he was gifted the suit property by the plaintiff. No documents were annexed by Defendant no. 1 to show any such gift deed.

Apropos the defence of defendant no. 2 (appellant), she states that she had given a loan of Rs.3,00,000/- to the Plaintiff to construct the suit property in the year 2002 and had also spent an amount of Rs.2,50,000/- for fittings & fixtures in the suit property. Defendant no. 2 stated that the suit property was gifted by Plaintiff to her grandchildren namely Aniket Tanwar and Nikhil Tanwar. She stated that her husband/Defendant no. 1 also took a loan of Rs.14,00,000/- from her. Besides, the husband of Plaintiff also took a loan of Rs.3,62,000/- from Defendant no. 2.

4. Ld. trial court observed that the Defendants were only licensees and Plaintiffs had complete right to get the suit property vacated from them, held that there were clear and unequivocal admissions made by both defendants, which were sufficient to partly decide the case. The ld. trial court thus ordered the vacation of suit property by the Defendants-licencees. It is the said order, which is challenged by the appellant-/defendant no. 2 before this court.

5. Ld. Counsel for Appellant has assailed the findings of ld. trial court on various grounds *inter alia* that the trial court did not apply its judicial mind while passing the order and failed to consider that the suit property was purchased from the ancestral funds generated by the Appellant's husband. He argued that the ld. trial court ignored the fact that Appellant was married to Respondent no. 1 on 27.10.1998 and the suit property was the matrimonial home of the Appellant. It is argued that after some time, the marital discord had happened and in the month of January 2000, mother in law /Respondent no. 1 had gifted the suit property orally to the minor children of the Appellant. It is argued that in last week of February 2000, Respondent no. 1 disclosed that she had gifted the suit property to her son / Respondent no. 2. He argued that at that time, the suit property was a vacant plot and Appellant got the same constructed from her own funds with the help of funds of her husband /Respondent no. 2. The Appellant was thus the absolute owner of the suit property as also admitted by Respondent no. 2 that the suit property was gifted to him by his mother. It is argued that both Appellant & Respondent no. 2 were teachers in a Government School, Delhi and in the year 2000, money was taken by Respondent no. 1 from Appellant to raise construction over property. Ld. Counsel submits that the impugned Order has been passed without appreciation of the pleadings on record and deserves to be set aside.

6. Per contra, Ld. counsel for Respondents while supporting the impugned order submitted that the ld. trial court rightly passed the same after going through the entire material including the documents produced by the Respondents. It was argued that Appellant had not approached the Court of MM (Mahila Court) for claiming any of reliefs under Domestic Violence Act and she attempted to claim such relief by filing application under Section 12 of Domestic

Violence Act before this Court but then had withdrawn the same.

7. Ld. Counsel for appellant was also heard on his application being under Order 41 Rule 27 CPC r/w Section 151 CPC filed during pendency of appeal on 23.08.2019 for taking on record certain documents i.e. GPA, Agreement to sell, Affidavit, Receipt, electricity bills in favour of Respondent no. 2 of the suit property. Counsel stated that these documents executed by Respondent no. 2 in favour of Appellant clearly indicated that the Appellant was the owner of the property. It is contended that these documents could not be filed by the earlier counsel for Appellant before trial court at relevant stage along with Written Statement. It was only when the Appellant engaged for herself a new Advocate that the said advocate came to know about the non filing of the documents that he moved the application under Order 8 Rule 1A CPC r/w Section 151 CPC for filing these documents before ld. trial court but the said application was dismissed by the ld. trial court on 07.06.2019. Counsel for the Appellant stated that these documents were necessary for the purpose of showing that the Appellant was the owner of the suit property.

8. The application was opposed by counsel for Respondents, who contended that the same did not attract the *pre-requisites* of the sections/provisions under which it was filed. It was contended that there was no reason much less plausible one to have this filed at the appellant stage, when the order of ld. trial court dismissing such application of Appellant on 07.06.2019 had attained finality being not challenged. Counsel for Respondents thus prayed that the application deserved dismissal on this count alone.

9. Apropos the Order 41 Rule 27 CPC, the additional evidence can be allowed at the stage of appeal only on the fulfillment of following conditions :

- (i) The evidence sought to be led was refused to be admitted by the trial court.
- (ii) The applicant, despite due diligence, had no knowledge of existence of the evidence or despite due diligence could not be produced by him before the trial Court.
- (iii) The appellant court required any documents to be produced or any witness to be examined to enable it to pronounce the judgment or for any substantial cause.

10. Having carefully mulled over the entire record, I observe that the grounds put forward by the Appellant for non production of documents are not appealing enough to be entertained. The trial court record shows that during whole proceedings, there is not even a whispering about the existence of these documents at the time of completion of pleadings or subsequent to the same. More over, as per own case of Appellant, the application for taking on record these documents already dismissed by ld. trial court; the said order was not challenged. As such, the issue in respect of these documents cannot be agitated before the appellate forum. In fact, none of the essentials of Order 41 Rule 27 CPC is attracted to the application. In such circumstances, the Appellant at the appellate stage is thus estopped from challenging the ownership of the plaintiff on the strength of the documents so sought to be filed. The application in such a scenario is misconceived, meritless and deserves dismissal. The same thus stands dismissed with cost of Rs.10,000/- (to be deposited with DLSA (Shahdara)).

11. Now coming to the grounds taken in the appeal, I have heard rival contentions of the parties and looked into the record in the light of the relevant statutory provisions of law.

12. A perusal of record suggests that the Appellant in para no. 5 of preliminary objections in written statement stated that she had provided loan to the Plaintiff for a sum of Rs.3,00,000/- for construction of the suit property. She further stated that she spent some amount on fittings and fixtures on the same. She further stated that the suit property was gifted by the Plaintiff /Respondent no. 1 to grand children namely Aniket Tanwar and Nikhil Tanwar.

13. The stand of the Appellant that the Respondent no. 1 had gifted the suit property to her grandchildren is categorically denied by the Respondent no. 2-husband of Appellant. The Respondent no. 2 has further denied the averments of Appellant including averment that the suit property was constructed from the funds of the Appellant. The stand of Respondent no. 2 is that the suit property was orally gifted to him by her mother. It is further contended that Respondent no. 2 had already filed a suit for divorce under Section 13(1) (ia) of Hindu Marriage Act against Appellant since Appellant had dispossessed the Respondent no. 2 from the suit property forcibly and after such dispossession, she was illegally occupying the suit property.

14. What emerges out from appraised of record is that the premise of the Appellant's claim was based upon the fact that the suit property was gifted by her mother-in-law to grandchildren. However, Id. trial court observed that no transfer of any interest in any immovable property could take place orally under

law. Admittedly, the Appellant did not file any record to show that the suit property was ever gifted by her mother in law to her grandchildren. Even if, the Appellant had spent amount on the fittings and fixtures and construction of the suit property, this could have given her only a right to claim recovery of the said amount but could not have created any right, title or interest in the suit property in her favour. Id. trial court observed that the averments taken by the Appellant in the written statement were bald averments and were sans any document. Similar were the averments of the Appellant in respect of the suit property being part of HUF having purchased from the funds of ancestral property. Id. trial court observed that the Appellant failed to show in what capacity she came into possession of the suit property along with her husband. The Appellant simply admitted that she and her husband were put into possession of the suit property by Respondent no. 1 and from pleadings, it clearly indicated the relationship between Respondent no. 1 and the Appellant as that of licensor and licensee only.

15. The trial court in its Order dated 25.04.2017 observes as below:-

“ It is also alleged that the documents being relied upon by the plaintiff do not prove ownership of the plaintiff in respect of suit property. The defendants have not stated that how they came into possession of the suit property. By claiming that the suit property has been gifted to them/their children, both defendants admit that they have been put into possession of the suit property by the plaintiff only. This makes the relationship between the plaintiff and the defendant as that of licensor and licensees and the law does not require a licensor to be the owner of the suit property, thus even if it is assumed for a moment that the plaintiff is not absolute owner of the suit property then also it is clear from the averments on record that she is the licensor and has complete right to get the suit property vacated from the licensees. Whereas, in the present case, there are clear and unequivocal admissions made by both the defendants which are sufficient to partly decide the case. Even in

one of the authorities cited by the ld. Counsel for the defendant no. 1, it has been stated that the affidavits are a mode of placing evidence before the court. Even Order XIX Rule 1 CPC provides for proof of any point by affidavit. It is noteworthy that Section 58 of the Evidence Act clearly provides that facts admitted need not be proved by leading evidence. Thus, the court is of the opinion that in view of categorical admissions made by the defendants, it is of little relevance if the plaintiff has not placed the appropriate verification clause in her affidavit or her plaint as the same would only hamper the court from going into the probative value of such plaint/affidavit. Whereas, the court is of the opinion that it is not required to go into the probative value as such as the relevant facts mentioned in the plaint accompanied by the affidavit have been admitted by the defendants.”

16. So far plea of counsel for Appellant that the Order is passed without any trial conducted by the ld. trial court concerns, I may state that under Rule 6 of Order 12 CPC, when any claim is admitted, the court has jurisdiction to enter a Judgment for plaintiff and to pass a decree on the admitted claim. The Rule is wide enough to cover oral admissions.

Rule 6 of Order 12 was amended by the Code of Civil Procedure (Amendment) Act, 1976 to clarify that the oral admissions are also covered by the Rule. Therefore, the Court can, at an interlocutory stage of the proceedings can pass a Judgment on the basis of admissions made by the defendant. For the same, it has to be shown to the Court that the admissions are clear and positive.

In the Judgment of **Hari Steel and Gen. Industries V. Daljit Singh**, Hon'ble Delhi High Court observes as under:-

“In the judgment in Himani Alloys Ltd. v. Tata Steel Ltd. 7, nature and scope of Order 12 Rule 6 CPC has been considered by Hon'ble Delhi High Court. In the aforesaid judgment Hon'ble Delhi High Court has held that the discretion conferred under Order 12 Rule 6 CPC is to be exercised judiciously, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant.”

17. It goes without saying that at the time of deciding an application under Order XII Rule 6 CPC, court is expected to examine the pleadings/ documents preferred to by the applicant for seeking relief on the basis of admissions allegedly made by the other side. The law under Order 12 Rule 6 CPC was discussed in **Inder Mohan Singh Vs. Sube Singh** RSA No. 160/2013 decided on 10.11.2014 by Hon'ble Delhi High Court wherein it was observed as under:

“ Order XII Rule 6 of the Code of Civil Procedure confers wide powers on the Court to pass a decree on clear, unambiguous, unconditional and unequivocal admissions. A judgment on admission under Order XII Rule 6 is not a matter of right but a matter of discretion of the Court. No doubt such discretion has to be exercised judiciously..... ”

18. In **Charanjit Lal Mehra vs. Smt. Kamal Saroj Mahajan**, (2005) 11 SCC 279, the Hon'ble Apex Court held that an admission under Order XII Rule 6 CPC can be inferred from the facts and circumstances of the case and that Order XII Rule 6 CPC has been enacted to expedite trial and where the courts find that the suit can be disposed of on such admissions, it should not hesitate from doing so. The Division Bench of Hon'ble Delhi High Court in the case of **Vijaya Myne vs. Satya Bhushan Kaura**, 142 (2007) DLT 483, while dealing with Order XII Rule 6 CPC, held that admissions can be constructive admissions and need not be specific or expressive, which can be inferred from vague and evasive denial in the written statement while answering specific pleas in the plaint and further, that admissions can even be inferred from the facts and circumstances of a case.

19. In **Shri Vimal Khanna vs. Shri Kishan Chand Khanna**, DRJ 116 (2010) 251, the Division Bench of Hon'ble Delhi High Court held that if otherwise found entitled to a decree on admissions, the plaintiff cannot be deprived thereof by astute drafting of the written statement or by taking pleas therein which have no legs to stand upon. Another Division Bench of Hon'ble Delhi High Court in **P.P.A. Impex Pvt. Ltd. vs. Mangal Sain Mittal**, 166 (2010) DLT 84 had extended the principle laid down by the Hon'ble Apex Court in the case of **T. Arivandandam vs. T.V. Satyapal**, (1977) 4 SCC 467 in relation to a plaint, to the written statement also and had held that a defence which is implausible and on a meaningful, but not formal reading, is manifestly vexatious and meritless, clever drafting should not be allowed to create an illusion and such defences should not be needlessly permitted to go to trial.

20. In view of the above conspectus of law and appraisal of entire record, this court finds that the impugned order passed by Id. trial court does not suffer from any perversity or erroneousousness. It is well-settled that an appellate court will not interfere with the discretion of the trial court only because a different view is possible. As long as the view taken by the court below is a reasonable one, no interference is warranted. Hon'ble Supreme Court in the case of **Wander Ltd. and Anr. v. Antox India P. Ltd.**: 1990 Supp SCC 727, held as under:-

"... 14. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial

manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

21. Appellant has failed to point out any illegality, perversity or error in the Order dated 25.04.2017 passed by ld. trial court on any of the counts as alleged. In such circumstances, the present appeal is devoid of any merits and same deserves dismissal.

22. The appeal of Appellant/Defendant no. 2 stands dismissed. File be consigned to record room after due compliance, as per rules.

23. Trial court record be sent back with copy of the order.

**Announced in the open court
on 12.09.2022**

**(RAVINDER BEDI)
Additional District Judge-02,
Shahdara, KKD Courts, Delhi
12.09.2022.**