
(2011) 12 DEL CK 0329

Delhi High Court

Case No: CS (OS) 1684 of 2009

Mahinder Pal Singh

APPELLANT

Vs

Ali Hussain Khan F+

RESPONDENT

Date of Decision: Dec. 1, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, 16A

Citation: (2012) 187 DLT 379

Hon'ble Judges: G.S. Sistani, J

Bench: Single Bench

Advocate: P.D. Gupta and Mr. Kamal Gupta, for the Appellant; Sanjay Rathi and Mr. Ajay Chaudhary, for the Respondent

Final Decision: Disposed Off

Judgement

G.S. Sistani, J.

Plaintiff has filed the present suit for possession, damages and mesne profits.

2. Plaintiff claims himself to be the absolute owner of a piece of land measuring 160 sq. yds (24" x 60") forming part of Khasra No.1498 situated in Village Rangpuri, Tehsil Mehrauli, New Delhi, which is bounded as under:

NORTH	:	Road 25 ft. wide
SOUTH	:	Road 15 ft. wide
EAST	:	Road 24 ft. wide
WEST	:	Plot of Smt. Usha Kohal

3. Mr. P.D. Gupta, learned counsel for the plaintiff, submits that the aforesaid plot was purchased by the plaintiff in the year 1989 from its previous owner, Smt. Asha

Jindal, wife of Sh. S.K. Jindal, for valuable consideration. On payment of sale consideration by the plaintiff to Smt. Asha Jindal, Smt. Asha Jindal executed a receipt, which was registered in the Office of Sub-Registrar at Sl.No.36447 in Additional Book No.I, Volume No.2042 on page 100 on 31.8.1989. Smt. Asha Jindal also executed an Agreement to Sell in respect of the said plot of land in favour of the plaintiff on the same date. The factum of receipt of entire sale consideration, execution and registration of the receipt in the Office of Sub-Registrar stands duly mentioned in the Agreement to Sell. In addition to above, Smt. Asha Jindal also executed a Will dated 31.8.1989 bequeathing the aforesaid plot in favour of the plaintiff. The said Will was also registered in the Office of Sub-Registrar at No.27439 in Additional Book No.3 Volume No.993 at page 30 on 31.8.1989. To enable the plaintiff to get the said plot transferred in his name or in the name of his nominee, a General Power of Attorney was also executed by Smt. Asha Jindal and registered in favour of the plaintiff on the same date. Smt. Asha Jindal also executed an affidavit, confirming having sold her plot to the plaintiff, which was attested by a Notary Public on the same date. Counsel further submits that since the colony was in the process of being developed, a Residents Welfare Association called "Vasant Kunj Enclave Housing Welfare Society (Regd.)" was formed and the plaintiff also became one of its members as far back as on 19.3.1994. The plaintiff also paid a sum of Rs.980/- as initial contribution and annual subscription against duly stamped receipt. In support of his submission counsel has drawn the attention of the court to a copy of the receipt, which has been filed along with list of documents. Counsel next submits that site plan of the said block, where the plaintiff's plot is situated, was also handed over to the plaintiff, a copy of which has been placed on record. In the said site plan the plot of the plaintiff has been identified and highlighted in Red colour. Counsel has drawn the attention of the Court to the list of owners maintained by Vasant Kunj Enclave Housing Welfare Society (Regd.) showing plaintiff to be the owner of the said plot at Sl. No.70. A copy of the list of owners has been placed on record.

4. Learned counsel for the plaintiff submits that defendant was a chowkidar/caretaker of the aforementioned "Vasant Kunj Enclave Housing Welfare Society (Regd.)", he was looking after the work of the society and also taking care of the properties of the members of the society including that of the plaintiff. Counsel further submits that plaintiff raised a boundary wall after purchase of the said plot and thereafter in the year 2004 plaintiff also raised kucha structure consisting of two rooms. Counsel next submits that plaintiff received summons in the suit filed by defendant for permanent injunction wherein defendant claimed himself to be in occupation and possession of the suit plot since the year 1989. Defendant also claimed that he became the owner of the said plot by means of an adverse possession and his possession with the passage of time had matured into ownership by way of adverse possession. According to the plaintiff documents annexed by the defendant in the suit filed by the defendant did not pertain to the years prior to 2004-2005. Counsel also submits that although in order to create false

evidence in his favour, defendant had also procured an electricity connection somewhere in the month of June, 2005, besides he also obtained an identity card dated 18.10.2008 in his name from the Office of Election Commissioner of India. Counsel submits that faced with the above situation plaintiff has filed the present suit.

5. Learned counsel for the plaintiff submits that status of the defendant with respect to the said plot is neither of an owner nor a tenant, but defendant is a trespasser and an illegal occupant, who has taken advantage of the vacant plot of the plaintiff and has occupied the same illegally. Counsel further submits that on 18.3.2011, counsel for the plaintiff had brought to the notice of the Court that defendant had made a statement in Court on 22.12.2010, which was sufficient to pass a decree under Order XII Rule 6 of the Code of Civil Procedure. This Court had noticed that this aspect would be considered on the next date of hearing. Thereafter the matter was adjourned for 20.4.2011 before the Joint Registrar and 18.5.2011 before the Court for hearing as to whether the plaintiff is entitled to a decree under Order XII Rule 6 CPC.

6. Learned counsel for the plaintiff submits that by an order dated 22.9.2010 this Court, having regard to the glaring facts of this case, had directed defendant to remain present in Court on the next date of hearing i.e. 24.11.2010. Counsel further submits that on 24.11.2010 defendant did not comply with the directions, however, an adjournment was sought on the ground that defendant was bed ridden. Similar request was also made by learned counsel for the defendant on 22.12.2010, on which date, the Court was forced to issue bailable warrants against the defendant, and it is only then the defendant appeared before the Court and made a statement on 24.12.2010 (date wrongly typed as "DECEMBER 22, 2010" in the statement). Counsel next submits that a careful reading of the statement made by defendant on 24.12.2010 would show that defendant has not disputed the ownership of the plaintiff. The defendant has deposed in his statement that the land, in question, where he is living belongs to the Zamindar, who had sold the land to one Sh. S.K. Jindal, who had approached him and told him that he has purchased the land. Defendant further deposed that he was occupying the suit land with the consent of Zamindar and even Sh. S.K. Jindal did not object to his possession. Defendant also deposed that he was not the owner of the land and nor he is a tenant, but was paying house tax since the year 2009. It was also deposed by the defendant that he had built a shop and one quarter. The deponent also admitted that there was no entry in the Revenue Record so far as his possession with regard to the suit land is concerned.

7. Learned counsel for the plaintiff submits that in view of the statement made by the defendant wherein he has admitted that the initial owner of the land was one Zamindar, who had sold the said land to one Sh. S.K. Jindal whereas Sh. S.K. Jindal is none else but the husband of Smt. Asha Jindal, who has entered into a sale

transaction with the plaintiff and in support of his ownership of the plaintiff he has also placed on record copies of the General Power of Attorney, Receipt, Will, Agreement to Sell and an affidavit. Counsel further submits that the aforesaid documents coupled with the statement made by defendant would categorically establish the ownership of the plaintiff. Counsel next submits that defendant has further stated that he is occupying the land, in question with the consent of Zamindar and further Sh. S.K. Jindal did not object to his possession. The effect of such a statement would be that defendant has been occupying the land, in question, as he is in permissive possession of the land, in question, as per his own statement made in Court. Counsel also submits that the stand taken by defendant in the written statement is diametrically opposite to the stand taken by the defendant in the statement, as a person, who is in permissive possession cannot claim adverse possession of the land in question.

8. Learned counsel for the plaintiff submits that to establish a claim of adverse possession the first and basic ingredient in law is that the possession of a person must be hostile and permissive possession can obviously not be hostile. In support of his arguments learned counsel for the plaintiff has relied upon *Madan Lal Kaushik v. Shree Yog Mayaji Temple & Ors.*, reported at 178 2011 DLT 398, more particularly paras 5, 12, 25 and 31, which reads as under:

5. Alternatively, the appellant submitted that he was in legal and physical possession by virtue of adverse possession continuously for more than 12 years without any interruption and the defendants had no right, title or interest to throw him out of the said premises. Hence the suit filed by him (Madan Lal) praying for a decree of declaration that he be declared the owner of the property No.10/7, Yog Maya Mandir, Mehrauli, New Delhi, "being in adverse possession for the last more than 12 years." He also prayed for a decree of permanent injunction restraining the defendants in the suit from dispossessing him from the aforesaid premises.

12. At this stage, the plaintiffs (Shree Yog Mayaji Mandir and others) filed an application under Order XII Rule 6 CPC, wherein it was stated that the contents of the written statement filed on behalf of the defendant No.1, and in particular paragraph 6 thereof, revealed that his only defence was that the suit property in his occupation was gifted to his father by Smt. Ram Pyari, wife of Shri Trikha way back in the year 1943 and after the death of his father Pt. Badlu, the said property was inherited by him from his father. It was further stated by the plaintiffs that in paragraph 15 of the written statement, the defendant No.1 had mildly raised the plea of adverse possession in the alternative. In other words, the case of the defendant No.1 in the pleadings was that he became the owner of the premises in question RFA 177/2004 Page 10 of 33 by inheritance from his father, who was gifted the said property by Smt. Ram Pyari. Alternatively, the defendant No.1 claims that he is the owner of the property by way of adverse possession. Ex facie, the said pleas are self-contradictory, as, if it is a case of gift, the question of adverse possession

would not arise and vice-versa. Moreover, the gift alleged by the defendant No.1 is without any document of title and as such is legally untenable and amounts to admission being an evasive and unspecific reply, and, at any rate it is a constructive admission to the claim of the plaintiffs in the plaint, entitling the plaintiffs in the plaint to a judgment and decree on the basis of the admissions in the pleadings of the defendant No.1.

25. The ambit and scope of Order XII Rule 6 CPC is such that it confers almost sweeping powers on the Court to render speedy judgment in the suit to save the parties from going through the rigmarole of a protracted trial. As laid down in a catena of judgments of the Supreme Court and of various High Courts, the only pre-requisite is that there must be admissions of fact arising in the suit, either in the pleadings or otherwise, whether orally or in writing, and such admissions of fact must be clear, unequivocal and unambiguous. There is, however, no requirement for such admissions of facts to be specific or express and even constructive admissions have been deemed sufficient to pronounce judgment thereon. Furthermore, such admissions, it is well settled, may be culled out from the pleadings of the parties "or otherwise" either by the Court or by any of the parties who may thereupon of its own motion move an application for pronouncement of judgment on the basis thereof. A duty is then cast on the Court to ascertain the admission of facts and to render judgment thereon, either in respect of the whole or a part of the claim made in the suit, after ascertaining whether the defence set up is such RFA 177/2004 Page 26 of 33 that it requires evidence for the determination of the issues or whether the defence is an irreconcilable one, rendering it well nigh impossible for the defendant to succeed even if the same is entertained. For the aforesaid purpose, it would be open to the Court to look into the admissions gathered even constructively for the purpose of rendering a speedy judgment, subject of course to the stipulation that the objections raised by the opposite party against rendering the judgment are such which do not go to the root of the matter and are inconsequential in nature, making it impossible for the objecting party to succeed even if entertained.

31. The other stand adopted by the appellant, viz., of ownership of the suit property by adverse possession for more than 12 years in hostility of its true owner, is also clearly unsustainable. To recapitulate, it is not the case of the appellant that his father Badlu Ram was in adverse possession. Badlu Ram died on 19.12.1991 and the appellant filed a suit for declaration in the year 1993. The question of the appellant being in adverse possession for more than 12 years, therefore, does not arise. Apart from this, as noted above, the mere fact that the appellant has come forward with a plea of adverse possession means that he admits the plaintiff to be the true owner. For a plea of ownership on the basis of adverse possession, the first and foremost condition is that the property must belong to a person other than the person pleading his title on the basis of adverse possession. The appellant who admits permissive possession/occupation in the same breath cannot be allowed to plead

adverse possession in the other, and that too without any hostile RFA 177/2004 Page 31 of 33 assertion made by him in denial of the title of the true owner. In the instant case, it may be noted that the appellant himself had impleaded the parties arrayed as plaintiffs in the suit of Yog Mayaji Temple as defendants in his suit. Thus, no question of hostile assertion arises or can be countenanced. At the risk of repetition, it is also noted that the defendant No.2 Sant Lal Kaushik, who is the brother of the appellant, has admitted the case of plaintiff in toto. The appellant seeks to brush this aside by asserting active collusion between the respondents and his brother. In the face of the admissions made by the appellant himself which have been culled out from his pleadings and inferred therefrom, in my view, this assertion must fall to the ground. Consequently, looking at the matter from any angle, the judgment of the trial court deserves to be affirmed.

9. Learned counsel for the plaintiff has further relied upon [Hemaji Waghaji Jat Vs. Bhikhabhai Khenqarbai Harijan and Others](#), , more particularly para 18, which is reproduced below:

18. In [Karnataka Board of Wakf Vs. Government of India and Others](#), , this court observed as under:-

In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Nonuse of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

10. Learned counsel for the plaintiff, in these circumstances, prays that defendant cannot be permitted to illegally occupy the plot purchased by the plaintiff after paying sale consideration to the erstwhile owner and, thus, it is a fit case for exercising jurisdiction under Order XII Rule 6 CPC and passing of a decree.

11. Mr. Sanjay Rathi, learned counsel for the defendant, has opposed the prayer made by the counsel for the plaintiff for passing a decree under Order XII Rule 6 CPC and submits that defendant has been in continuous occupation of the suit property since the year 1989 and neither the plaintiff after purchasing the plot, in question, nor the erstwhile owner have ever made any effort to challenge the occupation of the defendant. Counsel further submits that plaintiff has miserably failed to establish that he is the owner of the land, in question; the documents placed by the plaintiff on record are incomplete and in order to establish his ownership, plaintiff should have placed on record the entire chain of documents to show how the land, in question, passed to Smt. Asha Jindal and as to whether Smt. Asha Jindal was at all the owner and competent to sell her rights with regard to the land, in question, to the plaintiff. Counsel next submits that plaintiff has failed to make out a case for passing a decree under Order XII Rule 6 CPC, the site plan is also vague, it does not identify the plot of the plaintiff and in these circumstances even in case a decree is passed, the same would be non-executable in the absence of proper identification for the plot, in question. It is contended by learned counsel for the defendant that Directory of Vasant Kunj Enclave Housing Welfare Society (Regd.) also does not clearly establishes the plaintiff to be the owner of the land, in question, as only Khasra no.1498/7 has been shown and the particulars of land are incomplete and the same cannot be linked with the plaintiff being its owner.

12. Learned counsel for the defendant has strongly urged before this Court that plaintiff has not approached this Court with clean hands and he has suppressed material facts that the plot, in question, stands acquired and more so it has been declared as a Ridge area and since plot stands acquired the plaintiff cannot claim himself to be the owner of the land, in question. Mr. Rathi has also laboured hard to submit that to attract the provisions of Order XII Rule 6 CPC admissions must be categorical and when numbers of facts are disputed and evidence is required to prove these facts, provisions of Order XII Rule 6 CPC cannot be attracted. For this proposition, learned counsel for the defendant has also relied upon *Sudesh Kumar Vasudeva v. Mrs. Veena Garg*, reported at 2004(3) CCC 311 (P&H), in support of his argument that when number of facts are disputed and evidence is required to prove those facts the provisions of Order XII Rule 6 CPC are not allowed.

13. Learned counsel for the defendant has argued before this Court that even in case of admission of a claim the Court is not bound to pass a decree on the basis of mere admission by defendant as Order XII Rule 6 CPC is an enabling provision, the Court has to see whether the plaintiff is entitled under law to get the relief sought for. For this proposition, learned counsel for the defendant has relied upon *Shisnpal v. Vikram*, reported at 1999 (1) CCC 605 (P&H). Counsel has also relied upon *Beryl Murzello & Ors. v. Ramchandra Bhairo Mane & Ors.*, reported at 2007 (4) CCC 393 (Bom) (Division Bench) and *Ranjiv Singh Saini v. Arjan Singh*, reported at 1999 (2) CCC 8 (P&H).

14. Learned counsel for the defendant submits that provision of Order XII Rule 6 CPC is not to be used when vexed and complicated questions or issues of law arise.

15. Learned counsel for the defendant has strongly urged before this Court that in spite of admission of fact having been made by a party to the suit the Court must require the plaintiff to prove the fact, which has been admitted by the defendant. To buttress his arguments, counsel for the defendant has relied upon *Balraj Taneja & Anr. v. Sunil Madan & Anr.*, reported at 1999 (Supp.) CCC 1 (S.C.).

16. On merits of the matter, counsel for the defendant submits that defendant is occupying the land, in question, and he is in adverse possession of the same.

17. I have heard counsel for the parties and also considered their rival submissions. Plaintiff has filed the present suit for possession, damages and mesne profits. The case set out by the plaintiff is that plaintiff is the lawful owner of a piece of land measuring 160 sq. yds., situated in Village Rangpuri, Tehsil Mehrauli, New Delhi. This plot of land was purchased by the plaintiff in the year 1989 for lawful consideration from its previous owner, Smt. Asha Jindal, wife of Sh.S.K. Jindal. In support of his ownership, the plaintiff has placed on record a receipt duly registered in the Office of Sub-Registrar, Agreement to Sell, Will dated 31.8.1989. The plaintiff has also placed on record of a General Power of Attorney executed by Smt. Asha Jindal and registered in favour of the plaintiff on the same date. The plaintiff has also placed on record the Directory of Vasant Kunj Enclave Housing Welfare Society (Regd.) of which he became a member as far back as on 19.3.1994 and for which he paid a sum of Rs.980/- as initial contribution and annual subscription against duly stamped receipt. The site plan and copy of the list of members maintained by Vasant Kunj Enclave Housing Welfare Society (Regd.) has also been placed on record. As per the plaint, defendant is a trespasser and he was never inducted as a tenant by the plaintiff or by the predecessors in interest. Order sheets of the present case reveal that when the matter came up for hearing on 11.8.2010 this Court directed both parties to remain present in Court on 25.8.2010. The defendant was not present on 25.8.2010, 29.9.2010 and 24.11.2010, however, on 24.11.2010 it was pointed out by learned counsel for the defendant to the Court that defendant is bed ridden and, therefore, he is unable to come to Court and the matter was adjourned to 22.12.2010. On 22.12.2010 following order was passed as the Court was satisfied that defendant cannot be procured except through coercive methods.

1. The defendant is not present. The learned counsel for the defendant on instructions from the son of the defendant has stated that the defendant is bed ridden and is not in a position to appear. No medical proof of the defendant has been produced or filed.

2. Adjournments have been sought by the learned counsel for the defendant since 25.8.2010, without any issue. I am satisfied that the presence of the defendant cannot be procured except through coercive methods. The Court wanted to record

the statement of the defendant under Order 10 CPC.

3. Under these circumstances, let bailable warrants in the sum of Rs.5,000/- be issued to the defendant through SHO Vasant Kunj to produce the defendant on 24.12.2010.

18. On the next date i.e. 24.12.2010 (date wrongly typed in the statement as December 22,2010), defendant appeared in Court and his statement was recorded. It will be useful to reproduce the statement made by defendant on 24.12.2010:

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Statement of Sh. Ali Hussain Khan, S/o Sh. Kamaluddin Khan, Aged: 65 years, R/o Khasra No.1498, Vasant Kunj Enclave, New Delhi on S.A.

The land in question where I am living belongs to the Zamindar including the Peripheral or he had sold the land to one Sh. S.K. Jindal who had approached me and told me that he has purchased the land. I was occupying the suit land with the consent of Zamindar and even Sh. S.K. Jindal did not object to my possession.

I am in occupation of the said land since 1987. I am not the owner of the land. I am not the tenant also but I am paying house tax to MCD. I have not brought the house tax receipt however, if asked, I will produce the same. I have started paying the house tax since last year only. They have charged me Rs.150/- or Rs.200/- or so. I am in occupation of 160 sq. yds. I have built a shop in one quarter. I have raised two small rooms and boundary wall also. I have received notice also although I have not brought the same. I will get that notice also. There is no entry in the Revenue record so far as my possession with regard to the suit land is concerned.

My house is surrendered with Col. Kohal, Sh. R.B. Sharma, Sh. K.C. Sharma and Sh. Cadha.

Whatever I have stated today is true and complete.

19. On 18.3.2011 it was submitted by counsel for the plaintiff that the admission of the defendant in his statement dated 24.12.2010 (date wrongly typed as December 22, 2010) before this Court is sufficient to pass a decree under Order XII Rule 6 CPC. The Court adjournment the matter to enable the parties to file brief note of submissions on this aspect. A specific order was passed on 18.5.2011 when the matter was adjournment for hearing as to whether the plaintiff is entitled to a decree under Order XII Rule 6 CPC.

20. A careful reading of the statement made by defendant on 24.12.2010 would reveal that he has admitted in his statement that the land, in question, where he is residing belongs to Jamindar, who had sold the same to one, Sh. S.K. Jindal, who informed the defendant that he had purchased the land. Statement of the defendant also reveals that defendant admits that he was occupying the suit land with the consent of Jamindar and Sh. S.K. Jindal did not object to his possession. The

defendant has further stated that he is not the owner of the land, in question, and he is not a tenant though he goes on to state that he is paying House Tax to MCD since the last year (i.e. 2009) and he has built a shop and one quarter.

21. Statement made by defendant on 24.12.2010 also clearly shows that the occupation of the defendant is neither of a tenant nor of an owner, but he is occupying the land, in question, with the consent of Jamindar, which was not objected to by the subsequent purchaser, Sh. S.K. Jindal. Sh. S.K. Jindal is the husband of Smt. Asha Jindal, who has sold the plot to the plaintiff. The statement made would show that defendant is at best in the permissive possession of the land. In the statement defendant had nowhere stated that his possession has been hostile to the plaintiff, who is the true and legal owner of the suit property. As per the own statement of the defendant, he has started paying House Tax since the last year, which would mean in the year 2009. The stand taken by the defendant in the written statement is that the plaintiff is not the owner of the land, in question, and the plaintiff has no locus standi to file the present suit. Another stand taken by the defendant, which is diametrically opposite to the present stand is that he is in occupation of the land, in question, for the past twenty years and his possession is open, hostile, animus and adverse. Defendant has placed on record a copy of his election card, which pertains to the year 2008 and electricity bill pertaining to the year 2005, besides photocopy of one house tax receipt, the date of which is illegible, but by going to the stand of the defendant the house tax receipt pertains to the year 2009. There is also nothing on record to suggest that defendant has been in occupation of the land, in question, for the past twenty years. The plea of adverse possession raised by the defendant in the written statement and the statement made by the defendant in Court on 24.12.2010 that he was occupying the suit land with the consent of Jamindar and even Sh. S.K. Jindal is mutually destructive and inconsistent pleas with one another and is thus clearly unsustainable.

22. It is well settled law that for attracting provisions of Order XII Rule 6 CPC the admission must be unambiguous and unequivocal. The scope of ambit of Order XII Rule 6 CPC was discussed by the Supreme Court of India in the case of [Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others](#), more particularly in para 12, which reads as under:

12. 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.

23. It is trite law that a Court can pass a judgment under Order XII Rule 6 CPC on the basis of statement made by the parties and not only on the pleadings but also dehors the pleadings that is either in any document or even in the statement recorded in the Court. In the case of [I.T.D.C. Ltd. Vs. Chander Pal Sood and Son](#), a Division Bench of this Court while interpreting the provisions of Order XII Rule 6 CPC has held in para 17 that "... Order XII Rule 6 of the 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 discrimination of any other question between the parties can make such order giving such judgment as it thinks fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing." (Also see [Rajiv Srivastava Vs. Sanjiv Tuli and Another](#), .

The aim and object of Order XII Rule 6 CPC is to enable the Court to pronounce judgments on the admissions, provided the admissions are sufficient, clear, unambiguous and equivocal. This provision has been enacted to render speedy justice and to save the parties from going through the rigmaroles of a protracted trial. Needless to say that Order XII Rule 6 CPC cannot be attracted in those cases where admissions are vague and evasive but order XII Rule 6 CPC would be attractive even where an admission can be inferred from the facts and circumstances of the case.

24. In order to establish his title, the plaintiff has placed on record various documents to show that the plot, subject matter of the present suit, was purchased in the year 1989 from its previous owner, Smt.Asha Jindal, against the sale consideration, for which he executed a receipt, which was registered in the Office of Sub- Registrar at Serial No.36447 in Additional Book No.1, Volume No.2042, on page 110 on 31.8.1989 and Smt. Asha Jindal executed an Agreement to Sell on the same date, in which the factum of receipt of entire sale consideration, execution and registration of the receipt in the office of Sub-Registrar was duly mentioned. In addition to the above documents, Smt. Asha Jindal, also executed a Will dated 31.8.1989 bequeathing the aforesaid property in favour of the plaintiff, which was duly registered in the Office of Sub-Registrar at Serial No.27439 in Additional Book no.3, Volume no.993 at page 30 on 31.8.1989. A Power of Attorney was also executed by Smt. Asha Sharma, which is duly registered in favour of the plaintiff. In addition thereto, Smt. Asha Sharma also executed an affidavit, confirming having sold her plot to the plaintiff, which was attested by the Notary Public. The documents obtained from the Residents Welfare Association and a receipt evidencing initial contribution of Rs.980/- have also been placed on record, which would prima facie establish the title of the plaintiff in the suit property. Accordingly, the stand taken by counsel for the defendant that plaintiff is not competent to file

the suit cannot be accepted. The statement made by defendant in Court on 24.12.2010 would amount to a clear, unambiguous and unequivocal admission that he is neither the owner of the plot nor a tenant. In view of this statement, the status of the defendant can at best be termed as a permissive possession and the stand taken with regard to adverse possession being diametrically opposite to the stand taken to the statement cannot be accepted. In view of this categorical admission, I am satisfied that this is a fit case for invoking the provisions of Order XII Rule 6 CPC. Accordingly, the suit is decreed in terms of Section 16A of the plaint.

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25. Plaintiff has also prayed for grant of mesne profits.

26. List the matter before Court for framing of issues on 27.3.2012. Parties will bring suggested issues to Court on the next date of hearing.