

(2013) 07 DEL CK 0509

Delhi High Court

Case No: FAO (OS) 315 of 2013 and CM Application 10502-10504 of 2013

Dr. Singh and Another

APPELLANT

Vs

Smt. Deepa Chaudhary and
Others

RESPONDENT

Date of Decision: July 15, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 10 Rule 2, Order 12 Rule 6

Hon'ble Judges: S. Ravindra Bhat, J; Najmi Waziri, J

Bench: Division Bench

Advocate: R.K. Saini, for the Appellant; Shiv Charan Garg, Shashank Mittal, Advocate for Resp-1 and Mr. Sunil Mittal, Advocate for Resp-2, for the Respondent

Final Decision: Dismissed

Judgement

S. Ravindra Bhat, J.

CM APPL. 10503/2013 (condonation of delay)

Allowed, subject to all just exceptions.

CM APPL. 10504/2013 (exemption)

Allowed, subject to all just exceptions.

FAO (OS) 315/2013 & CM APPL. 10502/2013 (stay)

1. The appeal is directed against the order of the learned Single Judge dated 21.02.2013 declining the plaintiff's application requesting for drawing a decree on the basis of admission under Order-XII Rule- 6, CPC. The brief facts are that the plaintiff in the suit claimed a decree for possession against the respondent/defendant, his daughter in law. In the written statement, the defendant resisted the claim and made certain allegations which included averments relating to complicity with her husband, i.e., the plaintiff's son. The plaintiff had alleged,

during the course of proceedings and based upon certain documents such as FIR lodged with the police, that the defendant had broken into the house. In this background, learned Single Judge, on a request being made, under Order- X CPC recorded the statement of the defendant/daughter in law on 21.09.2012. The defendant in that, inter alia, stated as follows:-

STATEMENT OF DEFENDANT NO. 1 MS. DEEPA CHOWDHARY AFTER 21.08.2012

Without Oath

The title deeds of the property bearing no. 14-B, Pocket-A Ashok Vihar is not in my name. I am living there since it is my matrimonial home. I entered this house after the marriage in the year 2005. I was living with my in-laws after my marriage at Moti Bagh residence and Tilak Lane residence. My father-in-law vacated his official quarters in the year 2010. All of us including my two female children shifted to the suit property in the month of October, 2010.

Q. It is correct that Aseem Chaudhary arranged a separate house at H.N. 35-B, Ashok Vihar in the month of February, 2011?

A. My husband took me along with my daughters to the above address somewhere in March 2011 on the pretext that there would be some quarrels with my sisters-in-law and thus I shifted to 35-B Ashok Vihar on 16.03.2011 and we were there for two days. My husband left me and my children without any support. I was admitted to hospital due to certain circumstances and after 21.03.2011. I never lived there. From there my mother and brothers shifted me to Greater Noida for some time. Then I came back in the first week of April, 2011 to the suit property since it is my matrimonial home.

Since then I have been residing in the matrimonial home along with my two daughters. I am being supported by my mother.

2. Based upon the written statement and the other materials, the plaintiff moved an application claiming a decree on admission. The learned Single Judge dismissed the application by the impugned order. In relation to the material reasoning in the impugned order declining the relief, especially the argument that the first defendant/daughter in law had in fact obtained another house and shifted there, the Court observed as follows:-

In order to find out whether defendant nos. 1, 3 and 4 have made any admission of any fact or made any averment from which it could be inferred that they had illegally taken the possession of the suit property as claimed by the plaintiffs and based on which inference the plaintiffs become entitled to have the suit decreed straightway even though issues arising of the pleadings stand framed and trial has also commenced, I have gone through the averments made in the plaint as well as the defence pleas taken by the defendant nos. 1, 3 and 4 in their written statement. These defendants have denied all the material averments made in the plaint. They

have denied that they had forcibly occupied the suit property on 15.07.2011. They have also denied that plaintiff no. 1 is the owner of the suit property and have pleaded that it is an ancestral property having been purchased with the funds of sale of ancestral properties. Defendant no. 1 also claims that the suit property is her shared household and she is entitled to live therein as a matter of right under the provisions of the Prevention of Women from Domestic Violence Act, 2005. Though she has admitted that in February, 2011 her husband shifted to another flat in Ashok Vihar temporarily but that was a trick played by him to oust from her matrimonial home.

Thus defendants 1, 3 and 4 having denied all the claims of the plaintiffs no decree can be passed in favour of the plaintiffs without giving them an opportunity to substantiate their defence pleas. Whether or not defendant no. 1 has a right to walk in and walk out of the suit flat has to be decided after evidence is led from both the sides and just because she has admitted that she had shifted another flat in Ashok Vihar in February, 2011 it cannot be inferred that she had re-entered forcibly after breaking open the locks or that in that manner the plaintiffs stood dispossessed on 15th July, 2011. This application is, therefore, dismissed.

3. Learned counsel for the plaintiff reiterated the submissions in support of the appeal. It was argued that on overall consideration of the materials on record, such as documents evidencing the identity proof of the defendant and her two children, the employment details disclosed by way of document and the copy of the complaint made to the CAW Cell by the defendant herself, it was revealed that she did not show the suit premises to be her residence. In these circumstances, the Court was not justified in declining a decree on admission. Learned counsel relied upon the decision in [Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others](#), and certain other judgments to state that the allegations of a property or suit premises being the matrimonial home cannot prevail under all circumstances and that members of family such as sons and daughter-in-law can also be subject to decree of evacuation and in the course a decree on admission can be drawn.

4. This Court has considered the material on record. In the application under Order-XII Rule- 6 CPC, the plaintiff relied upon the statement made by the defendant in Court on 21.09.2012 and also dealt with other circumstances such as the documents evidencing the address of another premises where she allegedly resided. The law pertaining to decree on admissions embodied in Order-XII Rule- 6, CPC is categorical in two aspects, i.e., that the Court "may" direct a decree to be drawn on admissions having regard to the materials on the record. It is not as if the Court is constrained or compelled in any manner to grant or decline the relief. Likewise, the law does not restrict the grant of relief only to consideration of pleadings and documents; other materials on the record or inferences arising from the proceedings themselves can impel the Court to draw a decree. In line with this, the Court is invested with discretion, which of course has to be exercised judiciously.

5. As discussed earlier, the Court was asked to draw a decree largely based upon a statement made by the defendant under Order X, Rule- 2 CPC. It is settled law that in such circumstances the Court should not consider the statements or admissions in isolation but has to see them in the context of the general pleadings of the concerned parties. In the present case, the defendant had categorically contested the plaintiff's right to secure the decree. She also had averred in the course of the pleadings that though an alternative premises had been obtained by her husband, she was virtually deserted by him. In these circumstances, she was compelled to move back to the suit premises. Even under Order-X Rule- 2, during the course of her statement to the Court, it was recorded that she was being maintained by her parents even though she continued to live in the matrimonial home.

6. Having regard to these circumstances and on a proper application of the law relating to decree on admissions, this Court is of the opinion that the impugned order cannot be faulted. The appeal is accordingly dismissed. Learned counsel for the appellant withdraws the appeal at the very outset so far as it concerns the order dated 15.05.2013.