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MOHD. RAZA & ANR.

v.

GEETA @ GEETA DEVI

(Civil Appeal No. 6098 of 2021)

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OCTOBER 04, 2021

[M. R. SHAH AND A. S. BOPANNA, JJ.]

Code of Civil Procedure, 1908: Or.XII r.6 – Decree on admission – Respondent-plaintiff filed suit for possession, mandatory/ permanent injunction and mesne profit with respect to suit property against defendants-appellants claiming himself to be the owner of suit property and claiming that defendant No.1 was tenant and has sub-let the suit property/premises in favour of defendant No.2 – In the written statement, case of defendants was that they were not ‘now’ the tenant of the plaintiff but the actual owner of suit property – It was further stated therein that defendant no.2 had purchased the suit property from plaintiff and suit for specific performance of contract against the plaintiff was pending for adjudication before trial court – After the written statement was filed by defendants, plaintiff filed an application before trial court to pass decree on admission under Or.XII r.6 of CPC – Trial court dismissed the application holding that defendant no.2 did not make any admission regarding ownership of the plaintiff and their tenancy in the suit property – High Court, however, allowed the revision petition and passed decree for eviction against the defendants – On appeal, held: In the written statement, it was specifically stated by defendants that they were not ‘now’ the tenant of the plaintiff but the actual owner of the suit property – It is not in dispute and even it was the case of defendants that defendant No.2 had instituted the suit for specific performance against the plaintiff with respect to the suit property – Therefore, at this stage, defendant No.2 cannot be said to be the owner as her suit for specific performance was pending adjudication – Unless and until a decree for specific performance is passed in her favour and/or the sale deed is executed pursuant to such a decree, she cannot be said to be owner of the suit property and plaintiff continues to be the owner and defendant No.1 continues to be the tenant – Therefore, the aforesaid is rightly treated as an admission on behalf of defendants with respect to

ownership of plaintiff and tenancy of defendant No.1 – High Court as such has rightly passed the decree on admission – However, decree passed by High Court shall be subject to the outcome of the suit for specific performance filed by defendant no.2. A

Dismissing the appeal, the Court

HELD: Till the suit for specific performance is decided in favour of the defendants, more particularly defendant No. 2, she cannot be said to be the owner and that therefore the plaintiff-respondent continues to be the owner and defendant No.1 continues to be the tenant. Therefore, the aforesaid is rightly treated as an admission on behalf of the defendants with respect to the ownership of the plaintiff and that defendant No.1 is a tenant. Therefore, the High Court as such has rightly passed the decree on admission under Order XII Rule 6 of CPC which in the facts and circumstances of the case cannot be said to be erroneous. However, at the same time, when the substantive suit filed by defendant No. 2 against the plaintiff for specific performance is pending, the decree passed by the High Court shall always be subject to the outcome of the said suit filed by defendant No. 2 against the plaintiff and if ultimately she succeeds in the suit, and a decree for specific performance is passed and the Trial Court passes the decree for possession (if prayed), then necessary consequences shall follow and the plaintiff, subject to filing the appeal, shall have to abide by the decree that may be passed in the suit for specific performance. [Paras 8, 9] [778-F-H; 779-A-B] B C D E

Himani Alloys Ltd. v. Tata Steel Ltd. (2011) 15 SCC 273 : [2011] 7 SCR 60 – referred to. F

Case Law Reference

[2011] 7 SCR 60 referred to Para 5
CIVIL APPELLATE JURISDICTION: Civil Appeal No.6098 of 2021 G

From the Judgment and Order dated 14.11.2019 of the High Court of Delhi at New Delhi in Civil Revision Petition No.175 of 2019 & CM Application No.35781 of 2019.

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A Sanobar Ali, Anurag Rawat, Irshad Ahmad, Advs. for the Appellants.

Harsh Kumar, Ms. Sikha Gogoi, Ms. Anzu K. Varkey, Advs. for the Respondent.

B The Judgment of the Court was delivered by
M. R. SHAH, J.

C 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 14.11.2019 passed by the High Court of Delhi at New Delhi in Civil Revision Petition No.175 of 2019, by which the High Court has allowed the said civil revision petition by quashing and setting aside the order dated 27.07.2019 passed by the learned Trial Court and consequently passed a decree of eviction on admission under Order XII Rule 6 of CPC, the original defendants have preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

D 2.1 That the respondent – original plaintiff had instituted Civil Suit No.805 of 2018 against the original defendants – appellants herein in the court of Senior Civil Judge, (East) Karkardooma, Delhi for possession, mandatory injunction, permanent injunction and mesne profit with respect to the property bearing No.246/4, Ground Floor, East School Block, Mandawali, Delhi (hereinafter referred to as the suit property). It was
E averred in the plaint that she is the lawful owner of the suit property since 15.01.2013 and defendant No.1 is the tenant vide rent agreement dated 14.03.2016, who illegally sub-let the property to defendant No.2 without any prior intimation to the plaintiff and thus the tenancy of defendant No.1 has been revoked/terminated by the plaintiff on
F 17.07.2018. Thus the plaintiff claimed the ownership and claimed that original defendant No.1 is the tenant.

G 2.2 At this stage, it is required to be noted that the defendants filed the written statement (the contents of the same shall be dealt with herein below). After the written statement filed on behalf of the defendants, the plaintiff filed an application before the learned Trial Court to pass a decree on admission under Order XII Rule 6 of CPC on the ground that in the written statement the defendants have admitted that the plaintiff is the owner and defendant No.1 is the tenant of the suit property. The said application was opposed on behalf of the defendants. A detailed reply was filed under Order XII Rule 6 of CPC on behalf of
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the defendants. That thereafter the learned Trial Court dismissed the said application vide order dated 27.07.2019 by observing that from the perusal of written statement filed by the defendants, it is palpably clear that defendant No.2 did not make any admission regarding the ownership of the plaintiff and their tenancy in the suit property.

3. Feeling aggrieved and dissatisfied with the order passed by the learned Trial Court dated 27.07.2019, dismissing the application under Order XII Rule 6 of CPC and refusing to pass the decree on admission, the plaintiff – respondent herein preferred the revision petition before the High Court. By the impugned judgment and order, the High Court has allowed the said revision application and quashed and set aside the order passed by the learned Trial Court dismissing the application under Order XII Rule 6 of CPC and consequently passed a decree for eviction in favour of the plaintiff and against the defendants. At this stage, it is required to be noted that in the written statement, it was the specific case on behalf of the defendants – appellants herein that defendant No.2 is the absolute owner of the suit property and has paid a sum of Rs.19 lakhs to the plaintiff and therefore she is in possession of the suit property as an owner. However, it is to be noted that defendant No.2 had instituted a suit against the plaintiff for specific performance of the contract/agreement on the basis of which defendant No.2 is claiming to be the owner of the suit property and the said suit is still pending.

4. Feeling aggrieved and dissatisfied with the judgment and order passed by the High Court, the original defendants have preferred the present appeal.

5. Shri Sanobar Ali, learned counsel appearing on behalf of the appellants – original defendants, has vehemently submitted that in the facts and circumstances of the case the High Court has materially erred in passing a decree on admission under Order XII Rule 6 of CPC. It is submitted that the High Court has failed to appreciate and consider the fact that as such there was no clear admission on the part of the defendants that the plaintiff is the owner and that the defendants/defendant No.1 is the tenant. It is submitted that therefore in absence of any clear and unambiguous admission, the plaintiff shall not be entitled to the decree on admission. Reliance is placed upon the decision of this court in the case of Himani Alloys Ltd. v. Tata Steel Ltd. reported in (2011) 15 SCC 273.

A 5.1 It is further submitted by the learned counsel appearing on behalf of the appellants that not only there are no specific admissions on the part of the defendants that the plaintiff is the owner of the suit property, but it was the specific case on behalf of defendant No.2 that she is the absolute owner of the suit property pursuant to the agreement to sell executed by the plaintiff and that defendant No.2 has paid a sum of
B Rs.19 lakhs to the plaintiff and therefore she is in possession of the suit property as an owner.

C 5.2 It is further submitted by the learned counsel appearing on behalf of the appellants that even otherwise the substantive suit filed by defendant No.2 against the plaintiff for specific performance of the contract to sell is pending before the learned Trial Court and that there is an injunction in favour of defendant No.2 – plaintiff in that suit.

D 6. The present appeal is vehemently opposed by Shri Harsh Kumar, learned counsel appearing on behalf of the respondent – original plaintiff. It is submitted that in the facts and circumstances of the case and considering the averments in the written statement, it can be seen that there is a clear admission on the part of the defendants that the plaintiff is the owner. He has taken us to the relevant averments in the written statement filed on behalf of the defendants – appellants herein.

E 6.1 It is submitted that it is the case on behalf of the defendants more particularly defendant No.2 that she is the owner of the suit property, therefore she is in possession of the suit property as an owner. It is submitted that defendant no.2 is claiming the ownership on the basis of the agreement to sell. It is submitted that agreement to sell does not confer ownership at all. A person in whose favour agreement to sell is
F executed becomes the owner either pursuant to the sale deed executed by the executor and/or a decree for specific performance of the contract has been passed. It is submitted that even as per the case of defendant No.2 the suit for specific performance is pending.

G 6.2 It is submitted that if the written statement as a whole is considered, in that case there is an admission on the part of the defendants that plaintiff is the owner and that even the tenancy in favour of defendant No.1 also has been admitted. However, it is the case on behalf of defendant No.2 that she is the owner and as an owner she is in possession which has no legal basis. It is submitted that therefore in the facts and circumstances of the case the High Court has rightly passed a decree
H on admission under Order XII Rule 6 of CPC.

7. We have heard the learned counsel appearing on behalf of the
respective parties at length. A

8. At the outset, it is required to be noted that as such respondent
herein - plaintiff filed the suit for possession, mandatory injunction,
permanent injunction and mesne profit with respect to the property
bearing No.246/4, Ground Floor, East School Block, Mandawali, Delhi B
against the defendants – appellants herein, claiming to be the owner of
the suit property and claiming that defendant No.1 is the tenant and
defendant No.1 has sub-let the suit property/premises in favour of
defendant No.2. In the written statement, it was the case on behalf of
the defendants – appellants herein that defendants are not ‘now’ the C
tenant of the plaintiff but the actual owner of the suit property. In
paragraphs 1 to 3, it is stated in the written statement as under:-

1. “That the present suit is not maintainable as the answering
defendants are not now the tenant of the plaintiff but the actual
owner of the suit property. The plaintiff sold the suit property in
question to the answering defendants for which some documents D
were also executed by the plaintiff in favour of the answering
defendant no. 2/Seema Begum on 15.01.2017 and 29.01.2017,
hence the suit of the plaintiff is liable to be dismissed with heavy
cost.

2. That the plaintiff has filed a false and fabricated suit by E
concealing the material and true facts of the case and the plaintiff
wants to harass the answering defendants and to grab the earnest
money of the answering defendants by filing the present suit. It is
submitted that the suit of the plaintiff is not maintainable in the
eye of law because this matter is not the suit for possession, F
mandatory injunction, permanent injunction and mesne profit
between the parties but it is the matter of the ownership, cheating
and grabbing the money of Rs. 19 Lakhs of the answering
defendant and it is the matter of compliance the agreement between
the parties which is executed by the plaintiff on 29.01.2017 hence G
the suit of the plaintiff is liable to be dismissed with cost.

3. That it is submitted that the suit property is absolutely concerned
with the defendants. The defendant no. 2/Seema Begum is absolute
owner of the suit property and she has every right or interest in
the suit property in question. She has purchased the suit property
in question and other part of the suit property (measuring area 30 H

- A sq. yards and 50 sq. yards) and the defendants had taken the peaceful possession both part of the suit property from the plaintiff. The defendant no. 2 has also filed a case/suit for specific performance of contract, declaration, eviction and permanent injunction against the plaintiff which is pending for adjudication before the Hon'ble Court of Sh. Sanatan Prasad, Ld. ADJ, East, KKD Courts, Delhi"
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Thus from the aforesaid, it is clear that the defendants are claiming the ownership of the suit property. The defendant no.2 is claiming to be in possession as an owner and claiming to be the owner. It can also be seen that the plaintiff has filed the suit as an owner. It is not in dispute and even it is the case on behalf of the defendants that defendant No.2 had instituted the suit for specific performance against the plaintiff with respect to the suit property, meaning thereby there is a clear cut admission that the plaintiff is the owner.

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9. It is to be noted at this stage that defendant No.2 cannot be said to be the owner as her suit for specific performance is yet to be decided by the learned Trial Court. Unless and until there is a decree passed in her favour and the decree for specific performance is passed and/or the sale deed is executed pursuant to such a decree, she cannot be said to be the owner of the suit property. Till the suit for specific performance is decided, the plaintiff – respondent herein continues to be the owner and defendant No.1 – appellant herein continues to be the tenant. In the written statement in paragraph 1, it is specifically stated by the defendants that the defendants are not '**now**' the tenant of the plaintiff but the actual owner of the suit property. As observed hereinabove, till the suit for specific performance is decided in favour of the defendants, more particularly defendant No.2, she cannot be said to be the owner and that therefore the plaintiff – respondent herein continues to be the owner and defendant No.1 continues to be the tenant. Therefore, the aforesaid is rightly treated as an admission on behalf of the defendants with respect to the ownership of the plaintiff and that defendant No.1 is a tenant. Therefore, the High Court as such has rightly passed the decree on admission under Order XII Rule 6 of CPC which in the facts and circumstances of the case cannot be said to be erroneous. However, at the same time, when the substantive suit filed by defendant No.2 against the plaintiff for specific performance is pending, it is to be observed that the decree passed by the High Court by the impugned judgment and
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order shall always be subject to the outcome of the said suit filed by defendant No.2 against the plaintiff and if ultimately she succeeds in the suit, and a decree for specific performance is passed and the learned Trial Court passes the decree for possession (if prayed), then necessary consequences shall follow and the plaintiff, subject to filing the appeal, shall have to abide by the decree that may be passed in the suit for specific performance. It also goes without saying that any injunction granted by the learned Trial Court in the suit filed by defendant No.2 for specific performance of the contract shall also not be affected unless subsequently the order of injunction if any in favour of defendant No.2 is modified by the learned Trial Court.

10. In view of the above and for the reasons stated above, the present appeal fails and the impugned judgment and order passed by the High Court is confirmed subject to the observations made in earlier paragraph No. 9. In the facts and circumstances of the case there shall be no order as to costs.