

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).19868/2022

[Arising out of impugned final judgment and order dated 22-09-2022 in RSA No.92/2022 passed by the High Court of Delhi at New Delhi]

SHEIKH ABEDIN

Petitioner(s)

VERSUS

IQBAL AHMED & ANR.

Respondent(s)

IA No. 166493/2022 - EXEMPTION FROM FILING O.T.

Date : 07-05-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) : Mr. Rajesh Kumar Chaurasia, AOR
Mr. Mohd. Hasibuddin, Adv.
Mr. Surya Pratap, Adv.
Mr. Sujeet Kumar, Adv.
Mr. Nitin Kumar Gupta, Adv.
Mr. Anurag Jain, Adv.
Mr. Onkar Prasad, Adv.

For Respondent(s) : Mr. Gaurav Kumar, Adv.
Mr. Niteen Kumar Sinha, AOR
Mr. Abhishek Raj, Adv.
Mr. Nitish Kumar Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. This petition arises from the judgment and order passed by the High Court of Delhi dated 22.09.2022 in Regular Second Appeal No.92/2022 preferred by the petitioner before us by which the Second Appeal came to be dismissed by the High Court thereby affirming the original judgment and decree passed by the trial court and also the judgment and order passed by the First Appellate Court.

2. It appears from the materials on record that the respondents (original plaintiffs) before us instituted Civil Suit No.1162/2019 in the Court of Senior Civil Judge, South District, Saket Court, New Delhi for declaration and permanent injunction with respect to an open plot of land bearing No.P-229 out of Khasra No.431/260 Joga Bai Extension, Nafis Road, Jamia Nagar, Okhla, Batla House, New Delhi ad measuring 260 Sq. Yards.

3. It is the case of the original plaintiff that the subject plot was purchased by them from one Shri Dilbar Husain Malik by way of a General Power of Attorney, Agreement to Sell and Affidavit respectively dated 27.11.2000 for a total sale consideration of Rs.80,000/-. According to the plaintiffs, the appellant before us was appointed as a caretaker / Chowkidar of the subject plot. According to the plaintiffs, the petitioner was permitted to stay in the suit property so that the property could also be taken care of. When time came for the petitioner (defendant) to vacate, he declined and that led to the filing of the suit praying for the following reliefs:-

"a) To declare that General Power of Attorney, agreement to sell, affidavit, receipt and will dated: 09.07.1996 in respect of the suit property executed by Shri Dilawar Husain Mallik in favour of Shaikh Abidin are invalid/void and nonest/illegal.

b) To permanently restrain the defendants from raising any construction over the suit property i.e. plot bearing No. P-229 out of khasra No. 431/260 Joga Bai Extension, Nafis Road, Jamia Nagar, Okhla batla House, New Delhi.

c) To permanently restrain the defendants and their agents from creating any third party interest in respect of the suit property i.e. plot bearing No. P-229 out of khasra No.431/260 Joga Bai, Nafis Road, Jamia Nagar, Okhla batla House, New Delhi.

d) Pass any other or further order(s) as this Hon'ble Court deem, fit and proper in the above said facts and circumstances."

4. In the Civil Suit instituted by the plaintiffs, an application came to be preferred by the plaintiffs under Order XII Rule 6 of the Civil Procedure Code, 1908 ("CPC"). In the said application, the plaintiffs prayed for the following reliefs:-

"A) Allow the present application and pass a decree of mandatory injunction in favour of the plaintiff and direct the defendant to remove all his belongings and handed over the possession of the plot No- P-229, Khasra No. 43/260, Joga Bai Extension, Nafis Road, Jamia Nagar, Okhla, Batla House, New Delhi in the interest of justice.

Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

5. On the strength of the application preferred by the plaintiffs under Order XII Rule 6 of the CPC, the Civil Court proceeded to pass the final decree vide order dated 16.10.2020. The operative part of the order passed by the trial court reads thus:-

"8. Thus, in view of the above mentioned judgment passed by Hon'ble Supreme Court, plaintiff being the caretaker of the suit property has no right, title and interest in the same and his possession cannot be allowed to continue indefinitely & cannot be protected as such. The filling of the present suit by the plaintiff is sufficient notice to the defendant to vacate the suit premises. However, it is a matter of record that the same has not been handed over to the plaintiff.

9. Plaintiff is, thus, entitled to a decree as prayed for in clause "A" of the plaint. Therefore, the suit of the plaintiff is hereby partly decreed and the defendant is directed to hand over the peaceful and vacant possession of the suit property to the plaintiff and to remove his belonging from the same within one month from today. Application is hereby allowed. Reader is directed to prepare the decree sheet accordingly."

6. The petitioner, being dissatisfied with the order passed by the trial court referred to above, went before the District Court by way of Regular Civil Appeal No.65/2020. The First Appeal also came to be dismissed vide judgment and order dated 29.04.2022. While dismissing the First Appeal, the First Appellate Court observed thus:-

"12. Coming to the merits of the case, the plaintiffs filed the suit for mandatory injunction and mesne profit for possession of the suit land. The case of the plaintiffs is that plaintiff no.1 is the owner of the suit land vide documents i.e. agreement to sell, power of attorney, receipt and possession letter and defendant has been shown to be caretaker/chowkidar in the same. The suit of the plaintiffs was decreed *qua* relief of possession vide impugned order on their application under Order XII Rule 6 CPC on the basis of admission made in the complaint dated 28.07.2009 *qua* which FIR bearing no. 178/2009 was registered. During the course of trial, the said complaint was exhibited in the testimony of defendant as Ex. PW-3/A. In the said complaint, the defendant had admitted the ownership of the plaintiffs *qua* the suit land in clear terms and also admitted his status as that of caretaker/chowkidar in

the same. The Ld. Trial Court has rightly held that "... Perusal of the certified copy of said complaint i.e. Ex. PW3A (exhibited in the present case as Ex. PW1/A (colly.)) shows that the defendant had categorically stated that he had been staying in Jhuggi on the aforementioned suit property and that the suit property belonged to plaintiff Iqbal Ahmad and that the defendant had been taking care of the suit property at the instance of his brother i.e. plaintiff no. 2 Mujeeb Ahmad. Thus, from the said complaint it is apparent that the defendant is only a licensee/chowkidar/caretaker in the suit property."

CONCLUSION

13. In view of abovesaid reasons, it is hereby held that Ld. Trial Court has rightly appreciated the material placed on record. The Court does not find any infirmity or irregularity in the reasoning given vide order dated 16.10.2020. Consequently, the appeal against the order dated 16.10.2020 is hereby dismissed. The order dated 16.10.2020 passed by Ld. Trial court is hereby affirmed."

7. Being dissatisfied with the judgment and order passed by the First Appellate Court, the petitioner went before the High Court by way of Second Appeal. The Second Appeal also came to be dismissed vide the impugned judgment and order. While dismissing the Second Appeal, the High Court took notice of the admissions made by the petitioner in the criminal proceedings and observed as under:-

"26. In the present case, learned Counsel for the appellant does not dispute the fact that, in the complaint dated 29th July 2009 lodged by him at PS. Jamia Nagar, which resulted in the registration of FIR 178/2009. The appellant had indeed acknowledged the suit property to be owned by Respondent 1 and that he had been inducted into the suit property by Respondent 2 as caretaker. This admission finds place in the complaint as well as in the FIR. During the course of regarding of evidence in the criminal proceedings, following the FIR, the appellant, as PW-3, specifically admitted the fact of filing the aforesaid complaint by him at police station Jamia Nagar on 27th August 2009, resulting in

the complaint being exhibited as Ex. PW-3/A. It is not the case of the appellant that, during the course of recording of the said evidence, there was any denial of the contents of the said FIR.

27. Inasmuch as considerable reliance has been placed by Mr. Chaurasia as well as by the appellant before the learned ADJ on the examination-in-chief and cross-examination of the appellant, as PW-3, in the criminal proceedings, which followed FIR 178/2009, I have minutely perused the said examination-in-chief and cross-examination. There is not a whisper of an averment, anywhere in the examination-in-chief or cross-examination, denying the ownership of Respondent 1 over the suit property or the induction of the appellant in the suit property, as a caretaker by Respondent 2.

28. All that Mr. Chaurasia would seek to rely upon, in the said record of cross-examination, is a voluntary statement made by the appellant during the cross-examination to the effect that he "had signed papers which police did not read over to me."

29. There is a world of difference between asserting that the FIR had not been read over to him by the police and denying the contents of the FIR or the assertions contained therein. Interestingly, the record of cross-examination does not even seek to state that the appellant was not conversant with the language in which the complaint or the FIR was written, as Mr. Chaurasia would seek to contend before this Court.

30. In that view of the matter, the mere statement that the police had not read over the papers to the appellant cannot amount denial, by the appellant, of the correctness of the contents of the complaint or, consequently, of the contents of FIR 178/2009.

31. In any event, these are matters which reside in the realm of appreciation of evidence. The appellant had, clearly and in no uncertain terms, admitted, in the complaint lodged by him at P.S. Jamia Nagar, that Respondent 1 was the owner of the suit property and that the appellant had been inducted in the suit property by Respondent 2 as a caretaker.

32. No fault, therefore, can be found either with the learned SCJ or with the learned ADJ for relying upon the said admissions in order to partly decree the suit under Order XII Rule 6 of the CPC, qua the aspect of possession.

33. The factum of ownership of the suit property by Respondent 1 and of the appellant being in occupation of the suit property merely as a Caretaker at the instance of Respondent 2 having thus been admitted, once Respondent 1 had terminated the licence under which the appellant continued to occupy the suit property, there was no justification for the appellant to continue in such occupation." (Emphasis supplied)

8. In such circumstances referred to above, the petitioner is also before us with the present petition.

9. We heard Mr. Rajesh Kumar Chaurasia, learned AOR appearing for the petitioner - original defendant and Mr. Gaurav Kumar, learned counsel appearing for the respondents - original plaintiffs.

10. We take notice of the order passed by this Court dated 18.11.2022. The same reads thus:-

"Issue notice returnable within six weeks.

Further proceedings in Execution case No. 53 of 2021 titled as "Iqbal Ahmed Vs. Sheikh Abidin" pending in the Court of ASCJ, South East, Saket Court, New Delhi, shall remain stayed till the next date of hearing."

11. Thus, it appears that while issuing notice, this Court stayed the further proceedings in Execution Case No.53/2021.

12. The entire debate revolves around the question whether the courts-below were justified to decree the suit in favour of the plaintiffs on the strength of the admission made by the petitioner in the course of the criminal proceedings and whether the trial court was justified to pass the final decree based on admission under Order XII Rule 6 CPC.

13. Rule 6(1) of Order XII CPC reads as under:-

"Rule 6. (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."

14. A decree can be passed under Order XII, Rule 6 CPC on the basis of an admission, whether it is contained in the pleadings or elsewhere. Such an admission may be in writing or may even be oral. No particular form of admission is necessary.

15. The purport of Rule 6 Order XII CPC is to enable the party to obtain speedy justice to the extent of the relevant admission which, according to the admission of the other party, he is entitled for. Admission on which judgment can be claimed must be clear and unequivocal one and such admission must be either of the entire claim made in the suit or even for a part of the claim for which decree can be passed separately. The requirement, prior to Code of the Civil Procedure (Amendment) Act, 1977, for filing an application under Order XII Rule 6 CPC stands waived and under the amended provisions of Order XII Rule 6 CPC, the Court on its motion and without an application by a party can proceed to pass a decree on an admission.

16. In the case of *Uttam Singh Duggal & Co. Ltd. vs. United Bank of India*, reported in (2000) 7 SCC 120, this Court held as follows:-

"In the Objects and Reasons set out while amending Rule 6 of Order 12 CPC 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.'

The Supreme Court should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment."

17. On the aspect of admission on the part of the petitioner, three courts have assigned cogent reasons. We need not disturb the concurrent findings recorded by the three courts-below in this regard.

18. Hence, Special Leave Petition is dismissed. The execution proceedings shall now proceed further expeditiously in accordance with law.

19. Pending application(s), if any, shall stand disposed of.

(NEHA GUPTA)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)