

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ IA No.934/2012 in CS(OS) 696/2011

PRATAP SINGH & ORS. Plaintiffs
Through: Mr. Sandeep Sharma, Advocate.

versus

RAM CHANDRA PATHAK & ANR. Defendants
Through: Mr. Rana Ranjit Singh, Advocate.

% Date of Decision : July 05, 2012

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

JUDGMENT

: REVA KHETRAPAL, J.

1. The plaintiffs in the above mentioned suit have filed the present application under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure for passing of a decree of possession in their favour and against the defendants in respect of two rooms, as per site plan annexed of the property bearing No.752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi, in view of the admissions made in the pleadings and documents by the defendants.

2. Briefly delineated, the case of the plaintiffs as set out in the plaint is that they are the owners of the property bearing No. 752-A

(South Side) measuring 210 Sq. Yds. situated at Sukhdev Market, Kotla Mubarakpur, New Delhi, having purchased the said property vide Sale Deed dated 7.1.2011 from the absolute owners, namely, Smt. Uma Devi, Sh. Sunil Saini, Sh. Anil Singh Saini, Sh. Vipin Saini, Sh. Prashant Saini, Sh. Sanjeev Singh Saini, Smt. Pushpa Saini, Sh. Mohit Saini, Sh. Keshav Saini, Mrs. Priti Saini, Sh. Shailender Singh Saini, Sh. Ravinder Singh Saini, Sh. Bhalinder Singh Saini, Sh. Kanwar Gopal Singh Saini, Sh. Rajinder Singh Saini, Sh. Yudhvir Singh Saini and Sh. Surjit Singh Saini. The absolute owners had given the suit property on rent to one M/s Vaishali International having its office at Yashwant Place, New Delhi. The said M/s Vaishali International earlier had its office at Defence Colony, New Delhi and, therefore, utilized the suit property for the purpose of residence of the drivers and other employees of the Company. M/s Vaishali International ran into financial difficulties and surrendered the tenancy of the suit property in favour of the erstwhile owners. Though M/s Vaishali International ceased to be the tenant in the said property and even called upon its employees to vacate the said

property, some of the employees started working for the erstwhile owners and, therefore, stayed on as domestic help.

3. The plaintiffs entered into an Agreement to Sell with the erstwhile owners of the property sometime in January, 2010. Since the left over employees, who had stayed on as domestic help, were using some rooms in the premises, the plaintiffs requested them to vacate the premises. These employees demanded money to vacate the property on the pretext that they had got some paint/polish done in their respective rooms. The plaintiffs accordingly with a view to resolve the dispute amicably agreed to reimburse the amount claimed by them and entered into an oral settlement with them and made the payment to them in accordance therewith. It is alleged in the plaint that though all the other occupants left the premises and abided by the settlement, the defendant No.1, Sh. Ram Chander Pathak turned dishonest and refused to vacate the premises. The defendant No.1 was the driver in the Company, M/s Vaishali International. Initially, he also agreed to vacate the premises and took part payment of Rs.50,000/- from the plaintiffs. The balance amount of Rs.2,50,000/- was to be paid on the defendant No.1 on his vacating the suit property.

However, thereafter the defendant No.1 refused to vacate the premises, though the plaintiffs were ready and willing to pay the balance amount. The documents signed by the defendant No.1 evidencing the receipt of the amount from the plaintiffs have been filed alongwith the plaint.

4. It is alleged in the plaint that during this period, the defendant No.1 also brought one of his relations into one of the vacated rooms, namely, Mr. Jagannath Mishra, and the latter was also made a party to the settlement; and the plaintiffs were also coerced into paying the money to the said Jagannath Mishra as well. The defendant no.1, however, flatly refused to vacate the premises and he, since the date of the purchase of the suit property, is an unauthorized occupant in the property. The status of the defendant No.1 after termination of his licence is, therefore, that of an illegal occupant and a trespasser. It is alleged that the defendants are causing a lot of harassment to them through their unauthorized occupation of the suit property and the continuous complaints made by them against the plaintiffs before the authorities. Hence, the present suit for possession, mandatory injunction and mesne profits.

5. In the present application under the provisions of Rule 6 of Order XII of the Code of Civil Procedure, the plaintiffs claim a decree of possession, *inter alia*, on the following admissions made by the defendants in their written statement:-

- (i) Receipt dated 14.03.2010 duly signed by the defendant No.1 and his wife, which is admitted before this Court;
- (ii) The statements of the defendant No.1, Shri Ram Chandra Pathak and his wife, Gyanwati recorded by the Court under the provisions of Order X of the Code of Civil Procedure on 2.9.2011.
- (iii) The Sale Deeds dated 7.1.2011 and 31.8.2010 executed in favour of the plaintiffs by the Sainis (the erstwhile owners).
- (iv) The Assessment Order issued by the Municipal Corporation of Delhi after getting the same verified from the revenue record.
- (v) The admission made by the defendants in their written statement that they have no ownership

rights in property bearing no.752-A, Sukhdev Market, Kotla Mubark Pur, New Delhi.

- (vi) The affidavits filed by Sh. Jagannath Mishra and his wife Smt. Usha in this Court, [the sister and brother-in-law of Smt. Gyanwati, (the wife of the defendant no.1], who were also residing in the said property, wherein they specifically stated that the defendant and his wife only want to blackmail the plaintiffs, and in fact they had vacated one room in property bearing No.752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi on 22.04.2011.
- (vii) Report dated 19.6.2010 of the Investigating Officer.
- (viii) Certificate dated 7.1.2011 executed by the Sainis i.e. the erstwhile owners, specifically mentioning that the defendants were in occupation of only two rooms in the property, which had been sold to the plaintiffs.

(ix) Copy of the Vigilance Enquiry Report prepared by
Sh. Shriniwas Rajora, E.O. Inspector/Vigilance.

6. The aforesaid application, needless to state, is contested by the defendant no.1, inter alia, on the ground that the plaintiffs have been making false averments from the very beginning and have filed the Sale Deed in respect of property bearing No.752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi with the suit, which is situated at the back side of the property bearing No. C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi and there exists a brick wall between both the properties. It is stated that intentionally and deliberately the plaintiffs have shown the property bearing No. C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi in the site plan filed with the suit and not the actual property, that is, A-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi. It is further stated that the application is also liable to be dismissed because the defendant no.1 at no point of time has admitted the case of the plaintiffs. It is submitted that the possession of the defendant No.1 and his family members is continuous, peaceful and open for the last more than 30 years, which is evident from the documents placed on record by them. It is

specifically denied that the defendant No.1 or his wife ever signed the receipt dated 14.03.2010. It is stated that the alleged Vigilance Enquiry Report was not impartial and had been submitted at the instance of the plaintiffs. It is also stated that the signatures of the defendant No.1 and his wife were obtained on blank papers and the defendant no.1 never executed any receipt.

7. In the course of hearing, Mr. Sandeep Sharma, the counsel for the plaintiffs, submitted that the admissions made by the defendants in their written statement read with the documentary evidence on record warrants the passing of a decree for possession under the provisions of Order XII Rule 6 of the Code of Civil Procedure. At the outset, the counsel referred to the receipt prepared by the daughter of the defendant no.1 in her hand-writing dated 14.03.2010, the contents of which are to the effect that the five tenants whose names are set out in the receipt have each settled to vacate the premises on receipt of a sum of Rs.3,00,000/-, that is, in all Rs.15,00,000/-; each has received Rs.50,000/- and the balance of Rs.2,50,000/- (total Rs.12,50,000/-) would be received by 30.05.2010 on vacating the premises. It is further set out that the aforesaid settlement has been arrived at

between Surinder Singh son of Sh. Budh Singh and the five families mentioned therein without any pressure or coercion and by mutual agreement. The receipt purports to be signed by (1) Sh. Ram Kewal Shukla and Prabhat Shukla (2) Ram Chander Pathak and Gyanwati Devi (3) Neeraj kumar and Renu (4) Jagannath Mishra and Usha (5) Chander Bhal Pandey and Anju Pandey.

8. Reference was next made by the counsel for the plaintiffs to the statements of the defendant No.1 and his wife recorded by this Court, which for the sake of ready reference are reproduced hereunder in their entirety.

“Statement of Sh. Ram Chandra Pathak S/o Sh. R.K.Pathak aged 49 years, R/o C-752, Sukhdev Nagar, Kotla Mubarakpur, New Delhi

On SA

I am residing at the premises no. C-752, Sukhdev Market, Kotla Mubarakpur, New Delhi since 1982. I am unable to give the date or exact month when I came to occupy the property. However, it may be either May or June of 1982.

I am in occupation of only two rooms of the said plot. There is a third room which is adjacent to these two rooms which is not having any roof. I have stored my belongings in this room. I am also occupying a kitchen, bathroom and latrine.

In 1982, I was employed as a peon with M/s East Coast Board Builders & Engineers Ltd.

One Sh. Ashutoshji Maharaj was living in these rooms in 1982. He had permitted me to occupy these two rooms in order to sustain myself. I was doing his sewa and he permitted me to occupy the premises for this reason.

I do not know who was the registered owner of the premises. I believed that Sh. Ashutoshji Maharaj was the owner of the premises.

Sh. Ashutoshji Maharaj started travelling in and out of these premises. He lastly stayed in these premises in the year 1985-86. I have never seen title documents of the said property.

*I have never paid any rent of these premises to any person. I have never paid property tax with regard to the said property. I have never written to the MCD or any authority or any person that I am the owner of the property which I was occupying. **I have never claimed that I am the owner of this property.***

Other than an incident when Saini group objecting to my occupation of the premises, no person has interfered with my possession. I had lodged a police complaint with regard to the harassment by the Saini group.

*I have seen the original of the document dated 14th March, 2010 Exh. P-1. I deny the encircled portion at point A-1 as my signatures. I normally sign in English and the signatures are in Hindi however **I can identify the signatures of my wife who has signed this document at point B-1 which is marked Exhibit P-1. The plaintiff had obtained our signatures on a blank page.***

Exh. P-1 contains the names and signatures of Sh. Neeraj Kumar at point K-1; Sh. Ram Kewal Shukla at point C-1; Sh. Jagannath Mishra at point D-1; Sh. Chandra Bhan Pandey at point F-1; Renu at point L-1; Usha at point H-1; Anju Pandey at point J-1; Sh. Bhagwan Dass Pandey at point G-1 and Indrawati at point E-1 who were also occupying different portions of the property.

I have seen the receipt dated 14th March, 2010 Exh. P-2 which contains my signatures at point A-2; R.K.Shukla at point C-2; of Jagannath at point D-2 and Indrawati at point E-2.

Usha is the wife of Sh. Jagannath Mishra. Anju Pandey is the daughter of Sh. Chandra Bhan Pandey. Neeraj Kumar is the son of Sh. Lurkhur Ram. Indrawati is the wife of Sh. Chandra Bhan Pandey. The full name of R.K.Shukla is Sh. Ram Kewal Shukla. Prabhat Shukla is the son of Sh. Ram Kewal Shukla. All these persons were earlier occupying other portions of the same property.

I worked with M/s East Coast Board till the year 1990. I started working as a driver since 1991 with Mr. Rajiv Desai who has a public relations company.

M/s BSES removed the electricity meter from the portion of the premises under my occupancy on the pretext that there was some fault in the meter and the same required to be changed. The meter was replaced by the electricity company. Thereafter a raid was conducted by the vigilance department of the electricity company which concluded that there was a fake meter and removed the same. The vigilance department of the electricity company has verified the meter thereafter and concluded that an error had been committed by its officials.

When the officials of the electricity company came to re-install the meter, Surender and Virender beat up the employees of the electricity company and did not permit the installation of the meter. The meter could be installed only with the assistance of the police. I claim that I am occupying a portion of the property bearing no. C-752, and not 752-A, only because Sh. Ashutoshji Maharaj had told me that the property was numbered in Sukhdev Market, New Delhi. I have no official assignment or number of any document in this regard.

The water and electricity connections were granted to me based on my application and the information given by me with regard to the details of the property including its number.”

“Statement of Smt. Gyanwati W/o Sh. R.C.Pathak aged 47 years, R/o C-752, Sukhdev Nagar, Kotla Mubarakpur, New Delhi

On SA

I was married to the defendant no.1 about 32-33 years ago in Delhi. I have been residing at the above address throughout.

My brother-in-law (devar) Sh. Babu Lal Pathak with his two children resides with us.

From my marriage to the defendant no.1, we were blessed with three daughters and one son. Our eldest daughter has since been married. My children are educated.

I am educated up to the 5th class and can read Hindi. I have seen the original of Exh. P-1 which bears my signatures at point B-1. It also contains the

signatures of my husband at point A-1 which is encircled. My husband and I had affixed our signatures on a blank piece of paper. I do not know who has written the document. My sister Smt. Usha has signed at point H-1. I do not know when my sister has put the signatures at point H-1. My sister and her family was also residing on the same property.

*We are occupying the rooms in the front of the property. My sister Usha and her family were occupying the last portion. Sh. Chander Bhan Pandey, a friend of my husband came to occupy a portion of the premises with his family. He had been given a room adjacent to the room occupied by us. **Sh. Jagannath Mishra is the husband of my sister Usha.** Sh. Neeraj Kumar was working with my husband in Chanakyapuri. He was living with his family in a jhuggi in Babu Market. On account of inconvenience being faced by Neeraj Kumar and his family on account of the ear operation which his wife had undergone, my husband had brought him also to a portion of the premises. Sh. Ganga Prasad Mishra is the father of Sh. Jagannath Mishra. He is therefore the father-in-law of my sister Usha. Anju Pandey was the daughter of Sh. Chander Bhan Pandey. Sh. Ram Kewal Shukla was living in a jhuggi in Gautam Nagar. He has been allotted an alternative accommodation against the jhuggi in Gautam Puri near Sarita Vihar. However Sh. Ram Kewal Shukla's wife was unwell and was being treated at the All India Institute of Medical Sciences which is near to our residence, for this reason we had permitted him to stay with us and were helping him with the treatment of his wife. Sh. Prabhat Shukla was the son of Sh. Ram Kewal Shukla.*

No rent was being paid by any person. They had been living with us out of love and affection.

I have met Sh. Ashutoshji Mahajan (sic: Maharaj) on his visits to the suit premises. I have looked after him and nursed him in his sickness. He had left the premises about 4 or 5 days before the assassination of Smt. Indira Gandhi. He has never come to the suit premises again. I do not know who is the owner of the suit premises.

*In the year 1999, the Saini family members had told us to vacate the suit premises failing which they would kill us. I had lodged the complaint with the police by post with regard to this incident. **We do not own any other property in Delhi.***

9. On the basis of the aforesaid statements, learned counsel contended that the defendant No.1, not having denied the execution of the receipts Exhibit P-1 and Exhibit P-2 and having received a sum of Rs.50,000/- in cash from the plaintiffs, had dishonestly backed out of the settlement. It was further contended that it was evident from the statements of the defendant no. 1 and his wife that they identify not only their own signatures but also the signatures of the other occupants on the receipts. Thus, Shri Ram Chandra Pathak admitted that the receipt Exhibit P-1 contains the names and signatures of his wife at point B-1 Sh. Neeraj Kumar at point K-1; Sh. Ram Kewal Shukla at point C-1; Sh. Jagannath Mishra at point D-1; Sh. Chandra Bhal Pandey at point F-1; Smt. Renu at point L-1; Smt. Usha at point

H-1; Smt. Anju Pandey at point J-1; Sh. Bhagwan Dass Pandey at point G-1 and Indrawati at point E-1, who were also occupying different portions of the property. He further admitted that the receipt Exhibit P-2 contained his signature at point A-2; signature of R.K. Shukla at point C-2; signature of Jagannath Mishra at point D-2 and of Indrawati at point E-2. He also categorically admitted that all these persons were earlier occupying different portions of the same property and had since vacated the same. Smt. Gyanwati in her statement recorded by this Court too admitted her signature on Exhibit P-1 at point B-1 and those of her husband at point A-1 and those of her sister, Smt. Usha at point H-1. She candidly stated that her sister and her family had also been residing in the same property; that her sister and her family were occupying the portion behind the front portion, that is, the “last portion”; that Sh. Chander Bhan Pandey, a friend of her husband’s, had also come to occupy a portion of the premises with his family and had a room adjacent to theirs; that Sh. Jagannath Mishra was the husband of her sister, Usha; that Sh. Neeraj Kumar, who was working with her husband in Chanakyapuri was also occupying a portion of the premises with his family; and that Shri

Ram Kewal Shukla had also been staying in the said premises with his family.

10. Mr. Sandeep Sharma next referred to an affidavit of Shri Jagannath Mishra, the brother-in-law of Sh. Ram Chandra Pathak, whose wife Smt. Usha is admittedly the sister of the defendant No.2, Smt. Gyanwati, wife of the defendant no.1. The relevant portion of the said affidavit reads as under:

"1. That I and my family was misled by Sh. Ram Chandra Pathak and his wife Smt. Gyanwati. In fact it is Sh. Ram Chandra Pathak and Smt. Gyanwati who are dishonest and want to illegally occupy the two rooms and blackmail the plaintiffs for huge sum of money. In fact we were only the licensee in the room and after it was terminated by the plaintiffs orally we have been unauthorisedly occupying the same.

2. I say that I have signed and taken a sum of Rs. 50,000/- in cash from the plaintiffs on 14.3.2010 and the receipt of the same is enclosed with this affidavit. This whole receipt was prepared by the daughter of Sh. Ram Chandra Pathak who has also signed on the said page and has in fact received a sum of Rs.50,000/- on the same date. It is he who turned dishonest and used his wife and daughter to black mail the plaintiffs. On the same date another receipt was also executed between the plaintiffs and myself and Sh. Ram Chandra Pathak. The said receipt was signed by me, my wife Smt. Usha, Ram Chandra Pathak and his wife.

3. I say that I have received the entire balance sum of Rs.2.50 lacs and has vacated the premises today. A sum of

Rs.75,000/- has been paid vide cheque bearing No. 000004 dated 22.4.2011 drawn on Kotak Mahindra Bank Ltd, M-3, South Extension-II, New Delhi and balance Rs.1,75,000/- has been paid in cash to me. The possession of the room has been handed over to the plaintiffs and I have no right, title and interest in the said property. In fact Sh. Ram Chandra Pathak or Smt. Gyanwati also have no right, title and interest in the said property as they are only occupying the same with the sole intent to blackmail the plaintiffs and cheat them.

4. I say that the plaintiffs are the owners of the property in question in which I was illegally occupying one room alongwith my family and also Sh. Ram Chandra Pathak is occupying two rooms illegally and unauthorisedly. I have handed over the possession of my room to the plaintiffs including the common spaces.

5. I say that the number of the property is 752-A and not C-752 as is being falsely claimed by Sh. Ram Chandra Pathak and his wife.”

11. An affidavit on identical lines was also filed by Smt. Usha, sister of Smt. Gyanwati and wife of Sh. Jagannath Mishra.

12. Mr. Sandeep Sharma also placed reliance on a Certificate dated 7.1.2011 issued by the erstwhile owners, Sh. Ravinder Singh Saini, Sh. Bhalinder Singh Saini, Sh. Kanwar Gopal Singh Saini, Sh. Rajinder Singh Saini, Sh. Yudhvair Singh Saini and Sh. Surjit Singh Saini, which is reproduced in its entirety hereunder:-

“TO WHOMSOEVER IT MAY CONCERN

The undersigned persons do hereby declare as under:-

That we were the erstwhile owners of Property bearing No. 752-A, measuring 210 sq. yds, Situated at Sukhdev Market, Kotla Mubarak Pur, New Delhi-110003.

That we have sold our share in the said property to S/Sh. Pratap Singh, Trilok Chand Semwal and Surinder Singh vide registered Sale Deed dated 07.01.2011 registered in the S.R.Office, New Delhi.

That we had in part performance of the sale agreement delivered the possession of substantial portion of the said property and symbolic possession of the remaining portion i.e. two rooms which was is possession of Sh. Ram Chandra Pathak and his wife Smt. Gyano Devi alongwith their children. Mrs. Gyano Devi who, at one time was a domestic help working some of us and was in that capacity allowed to occupy the said two room portion of the property as a licensee.

That we had revoked the license and had asked her to vacate the premises in her occupation before the execution of sale deed dt. 07.01.2011 in favour of S/Sh. Pratap Singh, Trilok Chand Semwal and Surinder Singh.

That Sh. Ram Chandra Pathak and his wife Smt. Gyano Devi have been in illegal and unauthorized possession of the portion of above said property.

<i>(1) Yudhvir Singh Saini</i>	<i>Sd/-</i>
<i>(2) Ravinder Singh Saini</i>	<i>Sd/-</i>
<i>(3) Bhalinder Singh Saini</i>	<i>Sd/-</i>
<i>(4) Kanwar Gopal Singh</i>	<i>Sd/-</i>
<i>(5) Rajinder Singh Saini</i>	<i>Sd/-</i>
<i>(6) Surjeet Singh</i>	<i>Sd/-</i>

13. To counter the submissions of Mr. Sandeep Sharma, Mr. Rana Ranjit Singh, the counsel for the defendant no.1, principally contended that the defendant and his family had been in continuous possession of property bearing no. C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi and occupying the same as owners by way of adverse possession for the last more than 30 years. He relied upon an insurance premium receipt, electricity bills, water bills, telephone bills, house-tax receipts and award of the Labour Court in this regard. He further contended that the plaintiffs had filed the site plan of property bearing No.C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi and not of property bearing No.A-752 Sukhdev Market, Kotla Mubarak Pur, New Delhi, though the plaintiffs have nothing to do with the property bearing No. C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi.

14. Having heard the learned counsel for the parties and gone through the records, the Court is of the opinion that the undeniable position is as follows:-

- (i) The plaintiffs are the owners of the property bearing No. 752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi by virtue of Sale Deed dated 7.1.2011, admeasuring 210 Sq. Yds. Prior thereto, that is, on 31.08.2010, plaintiffs had purchased land admeasuring 80 Sq. Yds. on the north side of 752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi by a separate Sale-Deed.
- (ii) Both the aforesaid Sale-Deeds are executed in favour of the plaintiffs by the erstwhile owners, namely, Smt. Uma Devi, Sh. Sunil Saini, Sh. Anil Singh Saini, Sh. Vipin Saini, Sh. Prashant Saini, Sh. Sanjeev Singh Saini, Smt. Pushpa Saini, Sh. Mohit Saini, Sh. Keshav Saini, Mrs. Priti Saini, Sh. Shailender Singh Saini, Sh. Ravinder Singh Saini, Sh. Bhalinder Singh Saini, Sh. Kanwar Gopal Singh Saini, Sh. Rajinder Singh Saini, Sh. Yudhvir Singh Saini and Sh. Surjit Singh Saini (for short “the Saini Group”).

- (iii) It is also not in dispute that the plaintiffs received physical possession of a substantial portion of the said property from the erstwhile (the Saini Group) and symbolic possession of the remaining portion, that is, two rooms, which were in the possession of the defendant no.1 and his family, who were using the said premises on a licence basis.
- (iv) It also stands established from the record that four other families, who were occupying a portion each of the suit property vacated the same after termination of their respective licence on receipt of money from the plaintiffs in the sum of Rs.3,00,000/- each.

15. The contention of the defendants that Receipts Exhibit P-1 and P-2 were signed in blank by them is belied by a bare look at the receipts, the originals whereof are on record. It is also on record that those who were living in the suit premises as licencees of the erstwhile owners (the Saini Group) have also not supported the case of the plaintiffs. **There is also on record the affidavit of the witness**

to the receipts, namely, Sh. Bal Kishan to the effect that the aforesaid receipts were executed in his presence. In the statements of the defendant no.1 and his wife recorded before this Court, they have identified the signatures of all the co-licencees on the aforesaid receipts as also their own signatures. Thus, the question of the receipts having been executed in blank does not arise.

16. The only two pleas raised in defence by the defendant no.1 in the written statement are as follows:-

- (i) that they are the owners of the property by virtue of adverse possession;
- (ii) that the property in question is C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi and not 752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi.

17. In so far as the plea of adverse possession is concerned, the following details are missing in the written statement of the defendants:-

- (i) the initial nature of the possession of the defendant no.1 and his wife;

- (ii) the date on which the defendant no.1 and his wife came into adverse possession;
- (iii) whether the factum of such possession was known to the real owner;
- (iv) the period during which the aforesaid possession continued; and
- (v) whether it was open and undisturbed.

18. In view of the lack of material particulars in this regard, as noted above, the statement of defendant No.1 and his wife were recorded under the provisions of Order X of the Code of Civil Procedure. In his statement, Sh. Ram Chandra Pathak, the defendant No.1 stated that he was unable to give the date or exact month when he came to occupy the property. However, it may be either May or June of 1982. In 1982, he was employed as a peon with M/s East Coast Board Builders & Engineers Limited. **One Sh. Ashutoshji Maharaj was living in those rooms in 1982. He had permitted him (the defendant No.1) to occupy these rooms in order to sustain himself.** He was doing his sewa and, therefore, he (Ashutoshji Maharaj) permitted him to occupy the premises for this

reason. **He did not know who were the registered owners of the premises.** He believed that Sh. Ashutoshji Maharaj was the owner of the premises. Sh. Ashutoshji Maharaj started travelling in and out of these premises. He lastly stayed in these premises in the year 1985-86.

19. In her statement, Smt. Gyanwati, wife of the defendant no.1, on being asked by the Court about Sh. Ashutoshji Maharaj, stated that she had met Sh. Ashutoshji Maharaj on his visits to the suit premises. She had looked after him and nursed him in his sickness. He had left the premises about 4 or 5 days before the assassination of Smt. Indira Gandhi and had never come to the premises again. **She did not know who was the owner of the suit premises.**

20. It deserves to be noticed at this juncture that there is no reference in the written statement to Sh. Ashutoshji Maharaj or to any other person or to Shri Ashutoshji or anyone else having allowed the defendants to occupy the two rooms in the suit premises. The name of Sh. Ashutoshji Maharaj emerged for the first time when the statements of the defendants No.1 and his wife were

recorded by the Court under Order X of the Code, **though the defendants No.1 and 2 did not claim even then that Sh. Ashutoshji Maharaj was at any point of time the owner of the premises** and as a matter of fact Smt. Gyanwati in her statement recorded by the Court clearly stated that in the year 1999, the Saini family members (the erstwhile owners) had told them to vacate the suit premises, failing which the defendants would be killed by them. She had lodged the complaint with the police with regard to this incident. **The story of Sh. Ashutoshji Maharaj is, therefore, of no avail to the defendant no.1. There is also no document in support of the plea of adverse possession.**

21. It is trite law that for a party to claim title by adverse possession, he must plead and prove that he is not only in continuous and uninterrupted possession for a period of 12 years or more but such a possession set up by him was hostile to the real owner whose title he denies by setting up such title in himself. It is, thus, not mere physical possession or continuous possession which could vest any right in the defendant no.1, but such continuous and uninterrupted possession necessarily has to be adverse and hostile to the real owner.

There is not a whisper in this regard in the written statement and the necessary inference which arises is that the defendant no.1 and his family were occupying two rooms in the suit premises as licencees of the erstwhile owners, viz, the Saini Group, which licence stood terminated as claimed by the plaintiffs and by the erstwhile owners.

22. The only other plea sought to be raised by the defendants No.1 viz., that the property, which is occupied by the defendant no.1 is part and parcel of the property bearing No.752-C, Sukhdev Market, Kotla Mubarak Pur, New Delhi, is also clearly untenable in the face of the documentary evidence on record, *inter alia*, being the following documents:

- (i) the Sale Deeds dated 7.1.2011 and 31.8.2010 and the site plan of the property, which is duly checked and authenticated by the Municipal Corporation of Delhi;
- (ii) the Certificate issued by the Municipal Corporation of Delhi regarding mutation of the property in favour of the plaintiffs, which specifically shows that the property in question is

No.752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi and not C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi.

- (iii) Receipt dated 14.03.2010 mentions the address as 752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi and not 752-C, Sukhdev Market, Kotla Mubarak Pur, New Delhi.
- (iv) The Assessment Order in respect of the suit property, issued by the Municipal Corporation of Delhi after getting the same verified from the Revenue Record, which mentions the address as A-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi.
- (v) The affidavits given by Sh.Jagannath Mishra and his wife, Smt. Usha to the effect that the address of the property was 752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi, and that they had vacated one room on 24.02.2011 in the said property and,

now, two rooms in the said property were occupied by the defendant No.1 and his wife.

- (vi) The Certificate dated 7.1.2011 executed by the erstwhile owners *viz.*, the Saini Group, wherein it is specifically mentioned that the defendant no.1 was in occupation of two rooms in the property bearing No. 752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi.
- (vii) Affidavit of Sh. Bal Kishan, witness to the receipts Exhibit P-1 and P-2, to the effect that the said receipts were executed in his presence between the plaintiffs and five families occupying the premises bearing No.752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi, and that at the time of the execution of the receipts, no dispute was raised in relation to the address of the property by anyone including the defendants No.1 and his wife.
- (viii) Complaint of Mr. Vikas Kumar from the office of BSES to the SHO, Police Station Kotla Mubark

Pur, New Delhi with regard to heated argument and scuffle between the plaintiffs and Smt. Gyanwati, wife of the defendant no.1 when he went for the installation of electricity meter at the premises bearing No. 752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi.

- (ix) Status report dated 2.9.2011 of the Station House Officer of the Police Station Kotla Mubark Pur, New Delhi to the effect that registration of FIR No. 173/2011 under Section 323/341/34 IPC was done against the plaintiffs on the complaint of BSES staff, Mr. Yusuf Khan, wherein it is mentioned that there is a civil dispute going on between the plaintiffs and Sh. Ram Chandra Pathak, Pratap Singh & Ors.; the plaintiffs claim the said plot to be 752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi, whereas the defendants claim the same property as C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi.

23. Then there is on record the Vigilance Enquiry Report which was obtained on the complaint of the wife of defendant No.1 that she was living in the property bearing No.C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi. The relevant extract of the said Vigilance Report is extracted hereinbelow:

“That the enquiry revealed that Gyanwati and her family members are residing in the property in question, that is, mentioning her address as C-752, Sukhdev Market, Kotla Mubarak Pur, New Delhi for the last 30 to 32 years. Although, she is in possession of Ration Card, Voter Card, Birth Certificate and other documents as well as water and electricity meter in her name, but such documents can be prepared easily by fulfilling mere formalities. She, however, does not have an authentic document to establish her ownership over the property in question. She has stated in her statement that the said plot was given to her by one Sh. Ashutosh. But, during discreet enquiry no

one has supported this fact. Moreover, no one has described that any person by the name Ashutosh ever resided in this property. On further verification from the Revenue Record, it has been found that there is no such person who is the owner of above property. As per the Revenue Record, there is no property bearing No.C-752, Sukhdev Market, kotla Mubarak Pur, New Delhi. Her claim is thus not authentic.”

24. In the aforesaid Enquiry Report, it is further mentioned that on 14.03.2010, an agreement was executed between Ram Chandra Pathak, husband of Gyanwati and other persons and Surender Singh (one of the partners of purchaser’s side) to vacate the property in question after receiving the compromise amount. It is further stated that Ram Chandra Pathak and Gyanwati had signed this agreement and after a long time had complained that they had signed upon the agreement **by force**. At the risk of repetition, it may be reiterated at this juncture that it was on the complaint of Smt. Gyanwati on 28.03.2011

that the aforesaid Vigilance Report was called from the higher authorities.

25. The aforesaid facts clearly establish that the plea being set up by the defendant no.1 that he is in possession of property bearing no. C-752 and not 752-A is patently false and cannot be permitted to be put on trial.

26. In a given situation, as in the instant case, admissions can be inferred from the documents filed by the parties, the documents issued by statutory authorities, the affidavits of those who were admittedly involved in the transaction and the statements made by the parties before the Court under Order X of the Code. Taken cumulatively, the aforesaid, in the present case are sufficient to entitle the plaintiffs to a decree of possession against the defendant No.1 under the provisions of Order XII Rule 6 of the Code. As held by the Supreme Court in the recent case of *Karam Kapahi & Ors. Vs. M/s Lal Chand Public Charitable Trust & Anr. AIR 2010 SC 2077*, the scope and ambit of the said provision is extremely wide. The relevant extract of the judgment analyses the provision as follows:-

“If the provision of Order 12 Rule 1 is compared with order 12 Rule 6, it becomes clear that the provision of

Order 12 Rule 6 is wider in as much as the provision of Order 12 Rule 1 is limited to admission by 'pleading or otherwise in writing' but in Order 12 Rule 6 the expression 'or otherwise' is much wider in view of the words used therein namely: 'admission of fact..... either in the pleading or otherwise, whether orally or in writing.

Keeping the width of this provision in mind this Court held that under this rule admissions can be inferred from facts and circumstances of the case."

27. In view of the aforesaid, the prayer in the present application is allowed and a decree of possession is passed in favour of the plaintiffs and against the defendant no.1 in respect of two rooms as per site plan annexed of the property bearing No. 752-A, Sukhdev Market, Kotla Mubarak Pur, New Delhi.

28. The application stands disposed of accordingly. CS(OS) 696/2011 also stands disposed of.

**REVA KHETRAPAL
JUDGE**

July 05, 2012
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