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

+ RFA(OS)No.85/2014

% **Date of Decision: 20th March, 2015**

SMT. URMILA DEVI & ANR. ....Appellants
Through : Mr. Raman Gandhi and Mr. Sunil Satyarthi, Advocates. with appellant no.1 in person.

versus

LAXMAN SINGH & ANR. ....Respondents
Through: Mr. Saurabh Tiwari, Advocate.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

GITA MITTAL, J.

1. It is well settled that what is not pleaded cannot be proved and facts admitted need not be proved. Yet the appellants assail the judgment and decree dated 28th of March, 2014 passed by the learned Single Judge of this court in the suit being CS(OS)No.3275/2012 premised on their admissions leading to the inevitable conclusion that no material issue necessitating trial arose in the suit. As a result the court passed a decree in terms of the prayer (a) in the plaint seeking recovery of possession of the

suit property in favour of the plaintiffs (respondent herein) and against the defendants, Urmila Devi and her husband Subhash Chand (appellants herein). So far as the second prayer for grant of mesne profits and damages is concerned, inquiry thereof is pending in the suit on the original side of this court in accordance with law.

2. The facts giving rise to the instant case are within the narrow compass. Laxman Singh and Smt. Hukum Kaur (son and wife respectively of late Shri Ganpat Ram) who are the plaintiffs in the suit - respondents herein, filed the CS(OS)No.3275/2012 against the appellants, seeking possession, damages and mesne profits claiming to be owners of the property bearing No.323/1-A, Block-D, (Old No.229/1-A), Sangam Vihar, New Delhi 110062 ad measuring 200 sq. yds. The property is a built up property, having eight rooms, a store room and two wash rooms. The suit claim is briefly noted hereafter.

3. As per the plaint, the said plot was purchased jointly by Laxman Singh and his late brother Bhagat Ram by an agreement to sell dated 12th April, 1985 executed in their favour by Shri Sohan Dutt Gupta. Other usual documents in the nature of general power of attorney, agreement to sell (both dated 12th April, 1985) and a cash receipt reflecting the sale consideration of ₹40,000/- were also executed by the erstwhile owners.

It is noteworthy that these documents have been filed by the appellants with their written statement and stand admitted by the respondents in admission/denial of documents. The documents have therefore, been exhibited before the learned Single Judge as

the documents of the appellants in accordance with law. There is no dispute that the property was built up by Laxman Singh and Bhagat Ram and at present, is having eight rooms, a store room and two wash rooms.

4. About twenty years prior to the filing of the suit in 2012, one of the two brothers namely Bhagat Ram, a bachelor, died intestate. He was also issueless at the time of his death. As such, his mother Smt. Hukum Kaur, being the only Class I heir, inherited his fifty per cent share in the said property. As such the plaintiffs, Laxman Singh and Hukum Kaur, were the exclusive and absolute owners of the suit property.

5. Approximately 14 years prior to filing of the suit, the defendants approached Shri Ganpat Ram seeking permission to take shelter in the suit property for a few months. Late Shri Ganpat Ram permitted them to reside in one of the rooms in the suit property intermittently. In the year 2008, the defendants approached the plaintiffs seeking permission to reside in two rooms of the property. However this request was not acceded too as the plaintiffs needed the property for their own purposes.

6. In July, 2010, the plaintiffs asked the defendants to vacate the only room in their possession as it was needed for the purpose of a wedding in the family. It was pointed out to them that permission to reside in the room stood revoked in July, 2010 and in the event they failed to handover the possession, they would be treated as trespassers.

7. Late Shri Ganpat Ram was suffering from tuberculosis, was also diabetic and he unfortunately died on 20th of August, 2010 due to complications arising therefrom. In December, 2010, the plaintiffs reminded the defendants to vacate the suit property, again making it clear that on their failure to do so they would be treated as trespassers and the plaintiffs would be compelled to initiate legal action against them.

8. The plaintiffs have stated that up to 21st of February, 2011 when the suit property was utilised for the purposes of marriage of the son of Laxman Singh's sister Bimla Devi, all the rooms, except one room occupied by the defendants, were under the lock and key of the plaintiffs. However, between 22nd of February, 2011 and 3rd of March, 2012, instead of handing over the possession, Urmila Devi filed CS No.35/2011 in the Saket District Court for permanent injunction against dispossession by the plaintiff no.1 (Laxman Singh) and his two sisters. Smt. Hukum Kaur (plaintiff no.1 in the present litigation and co-owner of the property) was not impleaded as a defendant.

9. When the plaintiffs visited the suit property after receipt of the summons in CS No.35/2011, they discovered that the defendants had broken open the locks of all the rooms of the suit property and replaced the same with their own locks. The defendants took shelter under a false police complaint filed by them.

10. Laxman Singh and his siblings contested the CS No.35/2011 by filing a common written statement setting up the same pleadings

as noted above. Additionally, one of the sister's of Laxman Singh, namely, Smt. Meera Devi (a co-defendant in CS No.35/2011) filed an application therein under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint.

11. The learned Civil Judge held that the appellant was admittedly a licensee and that on the eve of filing of the suit by the appellant, the licence stood revoked. It was held that no injunction prohibiting recovery of possession against the licensee as prayed by the appellant was maintainable as the licensee cannot continue to retain possession after termination of the license. By the judgment dated 31st of May, 2012, the learned Civil Judge therefore, rejected the plaint for want of cause of action.

12. Urmila Devi filed a first appeal being RCA No.29/2012 before the District Judge. On the 18th of October, 2012, the Additional District Judge dismissed the application of the appellant under Section 5 of the Limitation Act praying for condonation of delay. As a result, the appeal was also dismissed.

13. Thereafter on the 28th of January, 2013 the appellant filed a second appeal under Section 100 of the Code of Civil Procedure which was registered as RSA No.30/2013 in this court praying for setting aside of the order dated 18th of October, 2012. This appeal was dismissed for non-prosecution by the order dated 27th of September, 2013 in the presence of counsel for the respondent.

14. In this background, Laxman Singh and his mother Hukum Kaur filed CS(OS) No.3275/2012 against Urmila Devi and her husband, the appellants herein, seeking a decree for possession and

mesne profits. The appellants contested the CS(OS)No.3275/2012 and filed a joint written statement. By way of the replication, the plaintiffs repudiated all the assertions made in the written statement.

15. Upon completion of pleadings, the suit was placed before the court on 25th of April, 2013 for framing of issues when the following order came to be passed:

> "1. The suit is ripe for framing of issues.
>
> 2. The counsel for the defendants has handed over proposed issues which are taken on record.
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> 3. The counsel for the plaintiffs states that no issue arises since there are no material pleas in the written statement and the suit insofar as for the relief of possession is liable to be decreed forthwith. It is argued that some of the pleas in the written statement in this suit are contrary to the pleadings by the defendant no.2 who is the wife of the defendant no.1 in the earlier suit and the orders and the proceedings therein.
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> 4. The counsels have been heard for some time.
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> 5. It is deemed expedient to record the statement of both the defendants under Order 10 read with Section 165 of the Evidence Act.
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> 6. On enquiry, it is informed that neither of the defendants are present in the Court today.
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> 7. Both the defendants are directed to personally appear before this Court on 24th May, 2013."

16. The appellants avoided making the statement as directed by the court on the 28th of May 2013. Either they did not appear or when they appeared, their counsel did not appear or sought adjournment for one reasons or another on the 28th of May, 2013; 13th August, 2013; 5th September, 2013; 9th October, 2013 and 8th November, 2013.

17. Finally on the 8th of November, 2013, counsel for the plaintiffs (present respondents) pressed that there were no material pleadings in the written statement and no issue therefore, was required to be struck. It was prayed that so far as relief of possession is concerned, the suit was liable to be decreed. The court heard arguments on this aspect of the matter and gave liberty to the parties to place judicial precedents relied upon by them in support before the court.

18. Learned counsel for the plaintiffs had pointed out that the defendants had admitted that they entered the property for temporary purposes with the permission of Shri Ganpat Ram and were paying no consideration. After their licence stood terminated, they had no *locus standi* to continue to remain in possession.

19. In the written statement, the appellants had claimed that with the permission of Sh.Ganpat Ram and that they were residing with Shri Ganpat Ram in joint possession of the property to the exclusion of the plaintiffs. The appellants claimed that they were taking care of the day to day needs of Late Shri Ganpat Ram and looking after all aspects of his life. A vague plea that the plaintiffs

were never in possession of the property for the last 18 years was set up.

20. The defendants set up a Will dated 4th January, 2010 executed by late Shri Ganpat Ram and claimed bequest in favour of Smt. Urmila Devi of 50% of the suit property by him as owner thereof. The Will contains a declaration that Bhagat Ram and Laxman Singh were the owners of the property.

21. At the same time, the defendants stated that as the plaintiffs were claiming under an agreement to sell, general power of attorney and receipt, etc., they were not the owners of the property. In support of this submission, reliance was placed on the pronouncement of the Supreme Court reported at ***(2012) 1 SCC 656, Suraj Lamps and Industries Pvt. Ltd. v. State of Haryana & Anr***.

22. Interestingly, the appellant also set up a half baked plea that the property had been purchased *benami* by late Shri Ganpat Ram in the name of his two minor sons. Simultaneously, the appellant further state that Shri Ganpat Ram was also trespasser on the property for the reason that the property was located in an unauthorized colony and the ownership of the property vests in the government!

23. As against the above mutually destructive pleas, a third plea is orally pressed before us in appeal that the plaintiffs had to establish title as well as possession for a period of 12 years prior to filing of the suit. The appellants claimed that as they were in

exclusive possession of the property with Shri Ganpat Ram, they were entitled to claim title by adverse possession.

24. After considering the entire matter, the learned Single Judge concluded that all material facts with regard to ownership, creation of the licence, its termination inter alia stood admitted and that the plaintiffs were entitled to a decree of possession resulting in the impugned judgment and decree dated 28th of March 2014 of possession in favour of the respondents. The learned Single Judge also observed that a decree could have been passed under Order X Rule 4 CPC for the failure of the defendants to make the statement, yet the matter was considered on merits. The appellants have assailed this judgment before this court.

25. Both sides have taken us through the entire record of CS(OS) No.3275/2012 including the documents filed by them. The respondents have also filed the certified copies of all prior litigation as well which also have been brought to our attention. Protracted submissions were also orally addressed.

Binding admissions by and on behalf of the appellants

26. So far as present consideration is concerned, we may first and foremost notice the stand of the appellants on the essential facts which have been treated as admissions by the learned Single Judge and have entitled the plaintiffs (present respondents) to the judgment and decree of possession, under the following headings :

A. *Admissions by the appellants that Laxman Singh and Bhagat Ram were the owners of the suit property.*

B. *Admission that occupation of the appellants was because Urmila Devi was inducted as a mere licencee in the premises by Late Shri Ganpat Ram.*

C. *Claim of title and possession of Urmila Devi not asserted over entire suit property but restricted to only 100 sq. yards i.e. of only half of the suit property.*

D. *Appellants case that they were occupying suit property with knowledge of family members of Ganpat Ram and therefore, the appellants' occupation had the respondents' implied consent to the same.*

E. *Appellants claim that they were in possession with Ganpat Ram and hence the admission that they were not in exclusive possession of the property.*

F. *Claim of donation of 100 yds. i.e., fifty percent of the property owned by Bhagat Ram to Urmila Devi.*

G. *Claim of the title by prescription on the sole plea that Urmila Devi was in joint possession with Ganpat Ram.*

H. *Termination of licence to occupy.*

I. *Claim over the entire suit property.*

27. We hereafter note the admissions made by the defendants on the above aspects as emerge from the suit record.

A. Admissions by the appellants that Laxman Singh and Bhagat Ram were the owners of the suit property.

(i) The appellants have unequivocally declared that the suit property was purchased by late Shri Ganpat Ram in the name of his two sons Shri Laxman Singh and Bhagat Ram by his own means. It is further stated that as Bhagat Ram expired untimely and intestate, without any legal heir or class-I heir, after his death, Shri Ganpat Ram became the owner of the half share of the property in question. In support of these pleas, the appellants have filed the following documents on the record of CS(OS)No.3275/2012:

a) A General Power of Attorney by Sh. Sohan Dutt Gupta in favour of Bhagat Ram & Laxman Singh, both son of Shri Ganpat Ram (**Ex. D-1**).

b) The Agreement to Sell dated 12th April, 1985 of plot of land measuring 200 sq. yards , bearing No. 323/1-A, Block-D (Old No. 229/1-A) executed between Sh. Sohan Dutt Gupta as owner and seller and Shri Bhagat Ram and Laxman Singh, both sons of Shri Ganpat Ram, r/o 15/1639, Govind Puri, Kalkaji, New Delhi (as purchaser) [**Ex.D-2**]

c) Cash receipts in the sum of ₹40,000/- [**Ex. D-3**] executed by Sohan Dutt Gupta in favour of Bhagat Ram and Laxman Singh evidencing receipt of the sale consideration from them.

d) An affidavit dated 12th April, 1985 executed by Sohan Dutt Gupta stating vacant and physical possession of the plot has been handed over to the purchasers. **(Exh.D-4)**

It is noteworthy that these very documents were also filed by the appellant Urmila Devi as her documents with her plaint in CS No.35/2011. Before the learned Single Judge, when put to admission/denial, the respondents admitted these documents and they were duly exhibited on record.

(ii) In the police complaint dated 19th January, 2011 lodged by Urmila Devi, she had also written as follows:

> "3. That the applicant had been allowed by Late Sh. Ganpat Ram, who purchased the said plot in the name of his two sons (1) Laxman and Bhagat out of two, son Bhagat had been expired about 20 years ago and that said Ganpat Ram, became the sole owner of the half share in said property and the half share of his son Bhagat. It is also pertinent to mention here that said plot had been purchased by said Ganpat Ram with his own earning and said Ganpat Ram only lived in the said house alongwith family members of applicant."
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> 5. That after untimely death of his son Bhagat he had a shocked in his mind and that he regularly lived with family of applicant. Therefore, said Late Ganpat Ram donated mutually and expressly and openly and in the knowledge of his family members, half share of Bhagat in the said property to the applicant, to which above noted persons had no any objection and that they all were consented persons thereto and that they raised no any objection to the decision of Late Sh. Ganpat Ram.
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> 6. That, said Late Sh. Ganpat Ram died on 20.10.2010 due to sickness and old age, but unfortunately and to the shock of applicant and her family members, all above noted persons began to extend threat in dire consequences to kill the husband of applicant and to get vacated the house of applicant forcibly to which they posses no right and title as

> applicant is the sole owner of half portion of said land by prescription, as she has been living in the said house for last more then 18 years and in physical possession and in use and occupation openly, expressly, regularly and without any interruption and that said half portion of property in question was donated and bequeathed in favour of applicant by Late Ganpat Ram before witnesses, and in the open knowledge of above noted persons."
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> (Underlining by us)

This complaint is also relied upon by the appellants before the learned Single Judge.

(iii) The appellants (defendants) also set up an alleged Will dated 4th January, 2010 purportedly executed by late Shri Ganpat Ram as testator which also has been filed by them in CS(OS) No.3275/2012. In this Will, it is stated that "*said **property** was **purchased** by the testator in the name of his two sons, namely, **Mr. Laxman Singh & Mr. Bhagat**. That unfortunately and with the mercy of God one son of the testator, namely, **Mr. Bhagat expired untimely without surviving any legal heir behind him**, hence **testator become the sole owner of the half portion of the said property measuring 100 sq. Yds.** Out of 200 sq. Yds. And that **Mr. Laxman Singh is the absolute owner of the property measuring 100 sq. yds. out of 200 sq. yds.** In the above noted property, therefore, **no other person has any right, title or interest of any nature over the said half portion of the property, i.e., 100 Sq. Yds. out of 200 Sq. Yds.**" It is further stated that "*the testator is the*

absolute and true owner of the said property after death of his son Mr. Bhagat who expired issueless."

(iv) Let us now examine some unequivocal declarations of the case of the respondents in the pleadings of the appellants. In para 3 of the plaint dated 22nd February, 2011 in CS No.35/2011, Urmila Devi had stated that "*late Shri Ganpat Ram, who purchased the said plot in the name of his two sons (1) Laxman and Bhagat out of two, son Bhagat had been expired about 20 years ago and that said Ganpat Ram, became the sole owner of the half share in the said property and the half share of his son Bhagat*."

(v) In para A of the replication dated 16th August, 2011 in CS No.35/2011, Urmila Devi reiterated the above stating that late Bhagat Ram expired "*untimely and* intestate *and* without *leaving behind him* legal heirs except the first grade legal heir, his father Ganpat Ram. *It is pertinent to mention here that said property in question had been* ***purchased*** *by late Ganpat Ram from his earning* ***in the name of his two sons Laxman and Bhagat****, therefore,* ***after death of Bhagat said late Ganpat Ram*** *became the owner of the property in question of the* ***share of Bhagat***."

(vi) In Urmila Devi's reply dated 16th February, 2012 to the application under Order VII Rule 11 (a) (c) and (d) of CPC filed by defendant no.2 - Meera Devi, daughter of Ganpat Ram, as preliminary objection No.2 Urmila Devi's stand is that "***defendant no.3 - Laxman is the real and lawful owner of the half portion of the subject matter…***".

(vii) Along with the plaint, in her CS No.35/2011, Urmila Devi, the appellant had filed an application under Order XXXIX of the Code of Civil Procedure praying for interim orders against the respondents herein. This application was dismissed by the learned Civil Judge – 04 by an order passed on 16th August, 2011. In this order, the learned Civil Judge had *inter alia* held as follow:

> "6. ***The plaintiff has tried to claim ownership firstly on the basis of prescription and secondly, by way of will executed by late Sh. Ganpat Ram***. It is ***admitted*** by the ***plaintiff that the property was purchased in the name of defendant no.3 and one Sh. Bhagat***. However, it is stated that on the death of Sh. Bhagat, the ***Ganpat Ram inherited half*** of the share of the suit property and subsequently executed the ***will*** in his favour ***out of love and affection***. ***There are other legal heirs of Sh. Bhagat who survived him and upon whom the share of Sh. Bhagat would have devolved***. Even otherwise, ***father Sh. Ganpat Ram is a Class-II, legal heir upon who the share of Sh. Bhagat could not have devolved in the presence of the class I legal heir. Therefore, Sh. Ganpat Ram could not have passed on a better title than what he had***.
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> 7. Right over the suit property has also been sought to be established on the basis of prescription extending over 18 years. ***Prescription as opposed to adverse possession does not entail acquisition of title over the property. It only relates to a right to use the property of another that is consistent with the rights of the owner***.
>
> 8. Even assuming that she has stepped into the shoes of one of the co-owners (which version is unacceptable for reason stated above), in effect by way of the present suit it appears that the plaintiff is seeking

> partition of the suit property in the garb of injunction as the shares are not defined.
>
> 9. Possession has been claimed over the entire suit property and ***injunction against dispossession has been sought only with regards to 100 sq. yards out of 200 sq. yards. It has not been specified as to which area of 100 sq. yards is the relief claimed for.*** For reasons stated above the plaintiff has failed to establish a prima facie case. Since, no prima facie case has been made out, the other essentials of balance of convenience and irreparable injury are not being delved upon."
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> (Emphasis by us)

28. It is explicit from the above documents including the police complaint and Will as well that both the appellants were claiming creation of the licence only in favour of Urmila Devi and occupation of others (which included her husband Subhash Chand) as members of her family.

The appellants have thus unequivocally and repeatedly unconditionally admitted that Laxman Singh and Bhagat Ram were the owners of the suit property.

29. In the impugned judgment, the learned Single Judge has noted that from these documents filed by the appellants, it was evident that after passing due consideration to the original owner, Laxman Singh and late Bhagat Ram have legally entered into possession of the suit property as back as in 1985 and that their father Shri Ganpat Ram had the consent and permission of his sons to reside in the suit property. This finding is supported by the

pleadings and the documents filed by the appellants as discussed hereafter.

B. Admission that occupation of the appellants was because Urmila Devi was inducted as a mere licencee in the premises by Late Shri Ganpat Ram.

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30. Though the discussion with regard to title overlaps the possession consideration, we set down hereafter some explicit factors in the appellants' case with regard to the nature of the appellants' occupation.

(i) In the CS No.35/2011 Urmila Devi in paras 3, 5 and 7 has claimed that "*Plaintiff had been **allowed** by late Shri Ganpat Ram….. Ganpat Ram only lived in the said house along with family members of plaintiff.*"

There is no claim of right of any family member of Urmila Devi of any kind. This plea is reiterated in her replication dated 16th August, 2011 in Para-A & D.

(ii) Even in her reply dated 16th February, 2012 to the application under Order VII Rule 11 (a) (c) and (d) of the CPC, Urmila Devi has taken the same plea.

(iii) In the reply dated 16th August, 2011 filed by Urmila Devi to the application under Section 340 Cr.P.C. in CS No.35/2011, it is stated that "***plaintiff was permitted by late Shri Ganpat Ram to live in the suit property as his daughter.***"

(iii) In the oral arguments on the application filed under Order VII Rule 11 of the CPC in CS No.35/2011, counsel for Urmila Devi on the 17th of April, 2012 stated that "*a person in peaceful possession of property cannot be dispossessed without due process of law and a suit for permanent injunction is maintainable to secure his peaceful possession*." The appellant thus did not assert any claim of ownership.

(iv) Thereafter while making submissions on the application under Order VI Rule 17 of the C.P.C. on the 5th of May 2012, the civil court had noted the following submissions on behalf of the appellant Urmila Devi :

> "During the course of arguments ***ld. Counsel for the plaintiff has admitted*** that as stated in his plaint, the plaintiff is residing in the suit property as a licensee for more than 19 years".

(v) This was followed by the following submission made by counsel for Urmila Devi on the 29th of May 2012 before the learned Civil Judge :

> "Counsel for the plaintiff has stated that ***as a licensee his license has not been terminated till date*** to which counsel for the defendant has replied that mere threat of dispossession by the defendant as stated by the plaintiff in his plaint is a deemed notice of revocation of such licensee."

These statements made on behalf of Urmila Devi have not been challenged by the appellants and bind them.

(vii) In para 5 of RCA No.29/2012, dated 22nd August, 2012 before the learned District Judge – cum- ASJ I/c, South and South

East, Saket Court Complex, Urmila Devi again repeated that "*she had been allowed by late Shri Ganpat Ram, who purchased the plot in the name of his two sons… that said plot had been purchased by said Ganpat Ram with his own earning and said Ganpat Ram only lived in said house along with family members of the appellant*". This was reiterated in the grounds taken by her wherein she has stated that she was in possession of the said premises as a licensee and that she has not received any notice from the respondents about the termination of the license and that without giving notice, the license cannot be revoked.

(viii) In para 7 of the second appeal dated 28th of January, 2013, being RSA No.30/2013 filed in this court praying for setting aside and quashing the order dated 18th October, 2012 of the learned ADJ passed in RCA No.29/2012, Urmila Devi has clearly admitted that she was the licensee in the premises when she avers that *"the term* ***licensee*** *in the context can only be understood as having a meaning of the appellant/plaintiff* ***having come into occupation of the suit property in a lawful manner through the consent of the said Ganpat Ram*** *to whom the respondents (children of Ganpat Ram) are related*."

(ix) The matter of the admissions does not end here. In para 3 of the preliminary objections in the joint written statement dated 12th March, 2013, filed in CS(OS) No.3275/2012 (the present suit), the appellants clearly state that they were in possession of the property "*though in occupation with the permission of the said Ganpat Ram. It was the said late Shri Ganpat Ram who had permitted or*

inducted the defendants to reside with him in the suit property". At the same time, the appellants have pleaded, relied and claimed under the said Will.

There is thus no ambiguity about the above admissions by both the appellants. Therefore, even as late as on 5th and 29th May, 2012, through her lawyer, as well as her own categorical pleadings of Urmila Devi on 22nd August, 2012, 28th January, 2013 and joint written statement dated 12th March, 2013 of both the appellants, it was their consistent stand that the nature of occupation was that as a mere licencee in the suit property who had permissive possession of the suit property without paying any consideration.

The findings of the learned Single Judge to this effect are unassailable.

C. *Claim of title and possession of Urmila Devi not asserted over entire suit property but restricted to only 100 sq. yards i.e. of only half of the suit property.*

(i) In the plaint in CS No.35/2011, Urmila Devi did not assert rights over the entire suit property but restricted her claim as follows :

*"**She** is the **sole owner** of **half portion** of the said land by prescription, as she has been living in the said house for last more than 18 years and in physical possession and in use and occupation openly, expressly, regularly and without any interruption and that said half portion of property in question was donated and bequeathed in favour of plaintiff by late Ganpat Ram*

before witnesses, and in the open knowledge of above noted person."

On these averments, she therefore made the following prayer-A :

"*Decree of permanent injunction thereby restraining the defendants and their associates, agents, assigns and representatives, successors and attorneys from selling, transferring, dispossessing, mortgaging, alienating or creating third party interest in the suit premises i.e., Property bearing Plot No.323/1-A, Block-D (Old No.229/1-A), Sangam Vihar, New Delhi 110062* ***area measuring 100 sq. yards, out of area measuring 200 sq. yds.****, specifically shown in site plan as red colour*."

(ii) In the plaint in CS No.35/2011, Urmila Devi does not even remotely suggest existence of any Will in her favour. But in her replication dated 16th August, 2011 in Para A, the appellant states that "*she has claimed only* ***her half share in property****, as she was* ***gifted by late Shri Ganpat Ram*** *by way of* ***Will Deed****, which was duly executed by late Shri Ganpat Ram before his death*".

(iii) In para 3 of her reply to the application under Order VII Rule 11 (a) (c) and (d) of the CPC 1908 in CS No.35/2011, Urmila Devi again reiterated that "*she has claimed her right only 100 sq. yds. land of said property honestly*."

(iv) Urmila Devi has filed a document purporting to be a Will dated 4th January, 2010 whereby she claims bequest by Ganpat Ram (Bhagat Ram's 50% share) in her favour. In this document, it is stated that Ganpat Ram, the "*Testator with his free Will and*

without any pressure from any corner and in sound and disposing mind bequeath his above said property in favour of the beneficiary as Testator has adopted the beneficiary Smt. Urmila as his daughter and that Testator mostly live with her in the above noted house and that beneficiary Smt. Urmila maintain the Testator and provide him food, clothe and take care of the Testator."

31. Even in RSA No.30/2013, Urmila Devi claimed only half portion of the suit property. The unequivocal claim of Urmila Devi throughout was to half of the suit property.

The above narration manifests that the claim of Urmila Devi was thus confined to fifty percent of the suit property. Her husband reiterated this claim in the joint written statement also placing reliance on the alleged Will. No right at all was claimed by the appellants over Laxman Singh's half share in the property.

(D) Appellants case that they were occupying suit property with knowledge of family members of Ganpat Ram and therefore, the appellants' occupation had the respondents' implied consent to the same.

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32. The appellants have also submitted that because the respondents did not object to their occupation, the respondents had impliedly consented to the same. In this regard, the following pleadings are relevant:

(i) In para 5 of her plaint dated 2nd January, 2011 in CS No.35/2011, Urmila Devi had stated as follows :

> "5. That after untimely death of his son Bhagat he had a shocked in his mind and that he regularly lived with family of plaintiff. Therefore, said late Ganpat Ram donated mutually and expressly and openly and in the knowledge of his family members, half share of Bhagat in the said property to the plaintiff, to which above noted persons had no any objection and that they all were consented persons thereto and that they raised no any objection to the decision of late Sh. Ganpat Ram."

(ii) In the replication filed in CS No.35/2011 dated 16th August, 2011 - the plaintiff Urmila Devi states that "*late Ganpat Ram has given half share of the property in dispute to the plaintiff, despite this no one raised any objection to this, therefore, all the defendants had the implied consent to the possession and occupation of the plaintiff in the house in question*."

(iii) In her reply dated 16th August, 2011 to the application under Section 340 Cr.P.C. filed by the defendants in CS No.35/2011, Urmila Devi has stated that "*she has been in use and occupation and physical possession of the same for last more than 18 years and that plaintiff was permitted by late Shri Ganpat Ram to live in the suit property as his daughter*." She further states that "*no defendant was in possession even in the suit property and that they all had in their knowledge about the possession and occupation of the plaintiff in the said suit property, therefore, all the defendants had the implied or express consent to the possession of plaintiff in the suit property*."

(iv) Several months later, in Urmila Devi's reply dated 16th of February, 2012 to the application under Order VII Rule 11 (a)(c) and (d) of the CPC (filed by defendant no.2 Meera Devi) in CS No.35/2011, she again stated that "*she has been living in the property in question for last 19 years, without any interruption and peacefully, expressly and obviously and in the well awareness of all defendants, who had the expressly and impliedly consent to the peacefully possession of plaintiff, therefore, it is well known settled law that peaceful possession of any person cannot be interfered or tampered without following process of law*".

(v) In Para H of RCA No. 29/2012, Urmila Devi has averred that "*respondents itself admitted that the appellant is in possession of the suit property as mere licensee and the license is liable to be revoked at any time. But the appellant has not received any notice from the respondent about the termination of the license*."

In Ground-I of the RCA No.12/2012, Urmila Devi reiterates her stand that, without giving the notice, her license cannot be revoked, thus reiterating her position that she was a lawful licencee of the owners.

33. It is the appellants admitted case that the plot of 200 sq. yards bearing no. 323/1-A, Block-D (Old No.229/1-A), Sangam Vihar, New Delhi 110062 was purchased in the names of Laxman Singh and Bhagat Ram who each owned fifty percent share therein.

34. It is an admitted position of Urmila Devi that Bhagat Ram had died intestate during the life time of his father Ganpat Ram. His mother Hukum Kaur is alive even on date. Therefore, as the

Class I heir upon death of Bhagat Ram, his mother Hukum Kaur would be the successor of his half share in the suit property.

35. Urmila Devi has thus unequivocally and repeatedly admitted that she was inducted into the suit property by Late Ganpat Ram, father of Laxman Singh and husband of Hukum Kaur. According to the case set up by Urmila Devi, she was a licensee because the family of Ganpat Ram had not objected to the occupation of Urmila Devi, and therefore they had all consented to the same. Thus, Urmila Devi had set up a plea that as such she was a licensee of Laxman Singh and successor of Bhagat Ram in the suit property.

36. As noted above, Urmila Devi's husband has not claimed an independent stand or right and has filed a joint written statement with his wife. He has also relied upon the very same documents as his wife and also admitted the above facts. The appellants have thus made a clear and categorical admission of occupation as a mere licensee.

E. Appellants claim that they were in possession with Ganpat Ram and hence they admit that they were not in exclusive possession of the property.

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37. The appellants have consistently taken the stand that they were living with Shri Ganpat Ram in the suit property. Let us see what has been said in this regard:

(i) In paras 3, 5 and 7 of her plaint in C.S.No.35/2011 it is stated that "*Ganpat Ram only lived in the house*". This plea is reiterated in the Urmila Devi's replication.

(ii) In the written statement dated 12th March, 2013 filed by Urmila Devi and her husband in CS (OS) 3275/2012, even while for the first time setting up the plea in para 3 that "*late Shri Ganpat Ram was a tresspasser on the property",* they categorically state that he *"was solely and entirely in occupation of the suit property along with the defendants*". They further state that *"**defendants were residing with the said Ganpat Ram in joint possession** of the property to the exclusion of the plaintiffs*" (respondents herein). It is further stated that "*defendants were in exclusive possession of the entire suit property though in occupation **with the permission of the said Ganpat Ram…. It was Shri Ganpat Ram who had permitted or inducted the defendants** (Urmila Devi and her husband) to **reside with him** in the said property*".

Earlier on we have extracted para 7 of this written statement above wherein the defendants have stated that they (present appellants) were living as a family with the deceased Ganpat Ram.

(iii) In Para 5(d) of the written statement dated 12th March, 2013 in CS(OS)No.3275/20125, the appellants repeat that the suit property was "*exclusively being occupied by late Shri Ganpat Ram jointly with the defendants who were permitted to occupy the property*".

(iv) In para 5(k) of the same written statement before the learned Single Judge, the appellants have stated that :

"*It has been categorically averred in the said suit for injunction that the plaintiffs were never in occupancy of any portion of the suit property in the said period which was being occupied by the defendants jointly with the said late Ganpat Ram.*"

(v) In Para 3 of the present appeal, which has been signed on 2nd May, 2014, Urmila Devi and her husband have again claimed that they were in "***exclusive possession of the entire suit property with said Shri Ganpat Ram who had inducted or permitted the appellants to reside in the same***".

Therefore, both the appellants have unequivocally admitted that during the lifetime of Late Ganpat Ram (expired only in August, 2010), they were not in exclusive possession of the suit property but were living therein as the family of Shri Ganpat Ram.

F. Claim of donation of 100 yds. i.e., fifty percent of the property owned by Bhagat Ram to Urmila Devi

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In para 5 of the plaint of CS No.35/2011 dated 22nd February, 2011, Urmila Devi pleaded as follows :

"*After untimely death of his son Bhagat*, he (Ganpat Ram) had a shocked in his mind and that he regularly lived with family of plaintiff". Therefore the said "*late Ganpat Ram **donated mutually**, expressly and openly and in the knowledge of his family members half share of Bhagat Ram in the said property to the plaintiff."*

We note that, however, no document to support the claimed '*donation*' is on record. The desperation of the appellants to

perpetuate the illegal occupation is manifest from the legally untenable pleas which have been put forth.

G. Claim of the title by prescription on the sole plea that Urmila Devi was in joint possession with Ganpat Ram.

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38. Let us examine another plea of the appellants of entitlement to the property by prescription. We first note the pleadings by the appellants in this regard :

(i) In para 6 of the plaint in CS No.35/2011, Urmila Devi set up a plea of ownership of half portion of the said land by prescription.

(ii) In CS NO. 35/2011, Urmila Devi had filed replication dated 16th August, 2011 wherein it is stated that the "*plaintiff possesses title of ownership and that it is well settled law that peaceful possession of any person cannot be interfered or tampered without following process of law*".

(iii) In para 7 of RCA No.29/2012, Urmila Devi claimed that she was "*the sole owner of half portion of the said land by prescription, as she has been living in the said house for last 18 years and in physical possession and in use and occupation openly, expressly, regularly and without any interruption and that* ***said half portion of property*** *in question was* ***donated and bequeathed in favour of appellant*** *by late Ganpat Ram before witnesses, and in the open knowledge of above noted persons*".

The above is repeated in grounds F & H of the appeal (RCA No. 29/2012).

39. The appellants have a completely misconceived notion of acquisition of right in the property by prescription. We may examine the articulation of the legal position by the Supreme Court in its pronouncement reported at ***(2001) 4 SCC 713, Syndicate Bank v. Prabha D. Naik & Anr.*** wherein in para 16, it is stated thus:

> **"16.** Article 505 of the Civil Code provides for acquisition of things and rights by possession and the same is ascribed to be positive prescription and discharge of obligations by reason of not ***demanding*** their fulfilment is known as negative prescription. The word "prescription" is in general a mode of acquiring title to incorporeal hereditaments by continued user, possession and enjoyment during the time. Article 535 prescribes a negative element of prescription which is akin to adverse possession. A prescriptive right however, differs from adverse possession, since prescription relates to incorporeal rights while adverse possession applies to an interest in the title to property. "Prescription" is usually applied to acquisition of incorporeal hereditaments and negative prescription obviously is a negation of such an acquisition. "Prescription" admittedly, is a part of substantive law but limitation relates to procedure, as such prescription differs from limitation. The former is one of the modes of acquiring a certain right while the latter viz. the limitation, bars a remedy, in short, prescription is a right conferred, limitation is a bar to a remedy. Chapter II of the Portuguese Civil Code provides detailed articles pertaining to prescription. *Corpus Juris Secundum*, Vol. 72 described the word "prescription" as below:
>
> > "In law prescription is of two kinds: it is either an instrument for the acquisition of property or an instrument of an exemption only from the servitude of judicial process. In the first sense, as

> relating to the acquisition of property, prescription is treated in adverse possession. In the second sense, as relating to exemption from the servitude of judicial process, prescription is treated as Limitation of Actions."

Therefore, prescription also relates to intangible rights such as the easements, whereas adverse possession applies to an interest in actual title to immovable property. Untenable because vague and incomplete, this plea of the appellants is also legally misconceived in the light of the clear position in law.

H. *Termination of license to occupy*

40. In the present case, there is no written licence deed to support the creation of the licence. The appellants have opposed the suit on the plea that the licence had not been terminated. Let us briefly examine the assertions of the appellant(s) with regard to the objections of the respondents to continuation of occupation by the plaintiff:

(i) In this regard, in para 6 of the plaint in CS No.35/2011, Urmila Devi stated that – *"... Late Sh. Ganpat Ram died on 20.10.2010 due to sickness and old age... all above noted persons began to* ***extend threat*** *in dire consequences to kill the husband of plaintiff and* ***to get vacated the house of the plaintiff forcibly*** *to which they possess no right and title as plaintiff is the sole owner of the half portion of said land…"*

In para 12 of the plaint, she further pleaded:

"That the cause of action firstly arose on 20.10.2010… all defendants extended threat time to time and repeatedly to the plaintiff to get vacated the said plot forcibly and unlawfully while they have no any right and title therein…"

(ii) Urmila Devi's replication dated 16th August, 2011 in CS No.35/2011 at para C notes "*that all the **defendants want to dispossessed the plaintiff and her family** members, forcibly and illegally and intentionally, without following the process of law and that all the defendants used entire illegal means and trick to disposes the plaintiff and her family members from the suit property.*"

(iii) In para 7 of RCA No. 29/2012, Urmila Devi has again urged that :

*"all above noted persons began to **extend threat** in dire consequences to kill the husband of appellant **to get vacated** the house of the appellant forcibly …*"

41. Taking a position that termination of a licence could only be by a written notice, the appellants further urged in RCA No.29/2012 that:

"h. Because the respondents itself admitted that the appellant is in possession of the suit property as mere licensee and the license is liable to be revoked at any time. But the appellant has not received any notice from the respondent about the termination of the license.

i. Because of without giving the notice the license cannot be revoked and the respondents threatened to the appellant to dispossessed from the suit premises forcefully and illegally and the appellant filed the police complaint for the same."

(iv) In their Written statement in CS(OS) No.3275/2012, the defendants in para -5 (h) have pleaded that the *"Plaintiff's, after the demise of late Shri Ganpat Ram, had been threatening the defendants to vacate the suit property and have even made attempts to forcibly dispossess the defendants*."

42. In CS No.35/2011, Urmila Devi filed an application for amendment of prayer clause in the plaint claiming permanent injunction against Laxman Singh and his siblings on the ground that Urmila Devi was a licensee in the premises. This application was dismissed by Ms. Ritu Singh, Civil Judge - 04 by an order dated 31st May, 2012 holding that the licensor (Laxman Singh) can revoke the license at any time and the licensee (Urmila Devi) can raise no objection to the same. The learned Civil Judge in the order dated 31st May, 2012 has relied on the admission of Urmila Devi that she was admitted as a licensee in the suit property by Ganpat Ram. It has further been held that the admitted plea that the other side was trying to dispossess Urmila Devi tantamounted to revocation of the license and that, after revocation, a licensee cannot claim any right in the property certainly in any legally enforceable right, which was liable to be protected by a decree of permanent injunction. This order has not been challenged and

these findings in the order dated 31st May, 2012 have attained finality. They bind the appellants in the present consideration.

I. *Claim over the entire suit property*

43. Despite the above claims restricted to half of the suit property, in the written statement dated 12th March, 2013 filed in CS(OS)No.3275/2012, the appellants have for the first time set up the plea of desperation that they had acquired title to the entire suit property by prescription on account of being in continuous possession of the same for the last eighteen years to the exclusion of the plaintiffs'/respondents. In the same breath, the appellants have relied on the document purporting to be a Will dated 4th January, 2010, allegedly executed by late Shri Ganpat Ram. As preliminary objection no.7 in the written statement dated 12th March, 2013 filed before the learned Single Judge, the appellants have set up the following plea :-

> *".....the defendants had acquired title to the entire suit property by prescription on account of being in continuous possession of the same for the past 18 years to the exclusion of the plaintiffs absolutely, even if the plaintiffs claim to possession of the suit property on the basis of succession to the property to the late Shri Ganpat Ram, then also claim of the plaintiff cannot succeed so far as the entire property is concerned. The said late Shri Ganpat Ram had executed a* ***deed of will*** *in favour of the defendant no. 2. As was urged on behalf of the defendants before the trial court, the said late Shri Ganpat Ram was entirely dependent upon the defendants for moral and physical support in life since the plaintiff has discarded him as of no use. The defendants were*

taking care of not only the day to day physical needs of the said late Ganpat Ram in the form of food clothing and providing other miscellaneous expenses but was also attending to him during the time when he was in bad health or required medical attention. The defendants were the only people that the said late Ganpat Ram was dependant upon for moral support in his old age in life. The defendants were living as a family with the said deceased. The plaintiffs had abandoned the said late Ganpat Ram. This also constituted the reason that the said person had executed a deed of will in favour of the defendants bequeathing half of the property in favour of the defendants."

(Underlining by us)

The appellants thus also set up two mutually destructive pleas in the same paragraph of the written statement one of acquisition of title "by prescription on account of being in continuous possession", the other plea of acquiring rights under a "Will". We propose to deal with these pleas at a later part of this judgment.

What is the effect of the admissions

44. Given the above unequivocal and unconditional admissions in the pleadings as well as the written statement and documents of the appellants, in CS(OS)No.3275/2012, could they be used for any purpose in the CS(OS)No.3275/2012?

45. Inasmuch as the impugned judgment of the learned Single Judge proceeds on the admissions made by Urmila Devi in the several pleadings as well as documents filed by the appellants, we may first and foremost extract the jurisdiction of the court to pass

judgment thereon under Order XII Rule 6 of the Code of Civil Procedure which reads as follow:

> "6. **Judgment on admissions**.- (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 an 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.
>
> (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."
>
> (Underlining by us)

46. So far as admissions are concerned, they are defined in Section 17 of the Indian Evidence Act, 1872 which reads as follows:-

> "17. **Admission defined.-** An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

47. In the instant case, admissions in writing on all relevant facts are contained in the pleadings of Urmila Devi in CS No.35/2011; the written statement filed in CS(OS)No.3275/2012 as well as the documents filed by the appellants. How is the court to proceed

with regard to admitted facts? The answer is found in Section 58 of the Indian Evidence Act, 1872 which reads as follows:

> "58. **Facts admitted need not be proved. -** No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which **by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:**
>
> Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

48. Light on this question is thrown by the pronouncement of the Supreme Court reported at ***(1967) 1 SCR 1 : AIR 1967 SC 341 Basant Singh v. Janki Singh & Ors.*** wherein the court approved the explanation of the Bombay High Court in the judgment reported at ***AIR 1960 Bombay 153 D.S. Mohite v. S.I. Mohile*** noting thus :

> **"5.** The High Court also observed that an admission in a pleading can be used only for the purpose of the suit in which the pleading was filed. The observations of Beaumont, C.J. in *Ramabai Shriniwas* v. *Bombay Government* [AIR 1941 Bom 144] lend some countenance to this view. But those observations were commented upon and explained by the Bombay High Court in *D.S. Mohlte* v. *S.I. Mohile* [AIR 1960 Bom 153]. ***An admission by a party in a plaint signed and verified by him in a prior suit is an admission within the meaning of Section 17 of the Indian Evidence Act, 1872, and may be proved against him in other litigations.*** The

> High Court also relied on the English law of evidence. In *Phipson on Evidence*, 10th Edn, Article 741, the English law is thus summarised:
> "Pleadings, although admissible in other actions, to show the institution of the suit and the nature of the case put forward, are regarded merely as the suggestion of counsel, and are not ***receivable against a party as admissions***, unless ***sworn***, ***signed***, or ***otherwise adopted by the party himself***."
> Thus, even under the English law, a statement in a pleading sworn, signed or otherwise adopted by a party is admissible against him in other actions. In *Marianski* v. *Cairns* [1 Macq 212 (HL)] the House of Lords decided that an ***admission in a pleading signed by a party was evidence against him in another suit not only with regard to a different subject-matter but also against a different opponent.*** Moreover, we are not concerned with the technicalities of the English law. ***Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admissions.*** Under the Indian law, ***an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits.*** In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that it is not true."
>
> (Underlining by us)

The admissions made by Urmila Devi in CS No.35/2011 would thus bind her in the present case as well.

49. Order XII Rule 6 of the CPC also enables the court at any stage of the suit to pronounce judgment on an admission made in the pleadings or otherwise, whether oral or in writing, by the other side. Reference in this regard can be made to the pronouncement

reported at ***ILR (2001) II Delhi 385, Jasmer Singh Sarna & Ors. v. Electronics Trade and Technology Development Corporation Ltd.***

50. In the judgment of the Division Bench of this court reported at ***104 (2003) DLT 151, Delhi Jal Board v. Surendra P. Malik***, this court had noted that Order XII Rule 6 of the CPC conferred almost every power on the court to render a speedy judgment in the suit to save the parties from going through the rigmarole of a protracted trial. Such judgment has to be passed on admissions of fact which are clear and unequivocal, unconditional and may relate to the whole claim or part of it. In para 9, the Division Bench had laid down the following tests :-

> "9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such ***admissions could be gathered even constructively for the purpose of rendering a speedy judgment.***"

It is well settled that a judgment under Order XII Rule 6 of the CPC can be based on a statement made by the parties de hors

the pleadings and such admissions could be either express or constructive.

51. In ***AIR 1974 MP 75, Shikharchand & Ors. v. Mst. Bari Bai & Ors.***, it was held that the court cannot grant relief to the plaintiff on a case which was not pleaded but in case the defendant himself put forward such a plea in answer to the plaintiff's claim, then the court can grant such a relief based on the defendant's pleading and admission.

52. In the instant case, the above narrations would show that the admissions made by Urmila Devi were clear, unambiguous and unconditional. It is not the stand of the appellants that the admissions made by Urmila Devi in the suit filed by her or the appeals noted above were not true or that they were made under any mistake of fact or law. It is not contended by them that the admissions were erroneously made. Urmila Devi also does not contend that she made those admissions under some misapprehension or under some fear or coercion.

53. In the written statement filed before this court, the appellants render no explanation for the admissions. No effort is made to withdraw the same but attempts to set up vague contradictory pleas have been made in a malafide attempt to perpetuate illegal occupation of the suit premises. So what is the effect of the admissions made in pleadings and documents noted above by us?

54. The Supreme Court had occasion also to consider similar evasive and unspecific pleas in the judgment reported at ***(2000) 7 SCC 120, Uttam Singh Duggal & Co. v. Union Bank of India &***

Ors. It would be useful to consider the observations of the court in paras 12 to 14 of this judgment in extenso which read thus :

> "12. As to the object of Order 12 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 the 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.
>
> 13. The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such Explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt

with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute, and the Court had a duty to decide the same and grant a decree, we think this approach is unexceptionable.

14. Before the trial Judge, there was no pleading much less an Explanation as to the circumstances in which the said admission was made, so as to take it out of the category of admissions which created a liability. on the other hand, what is stated in the course of the pleadings, in answer to the application filed under Order 12 Rule 6 CPC, the stand is clearly to the contrary. Statements had been made in the course of the minutes of the Board of Directors' meeting held on 30.5.1990 which we have already adverted to in detail. in the pleadings raised before the Court, there is a clear statement made by the respondent as to the undisputed part of the claim made by them. In regard to this aspect of communicating the resolution dated 30.5.1990 in the letter dated 4.6.1990 what is stated in the affidavit-in-opposition in application under Order 12 Rule 6 CPC is save what are matters on record and save what would appear from the letter (sic resolution) dated 30.5.1990 all allegations to the contrary are disputed and denied. This averment would clearly mean that the petitioner does not deny a word of what was recorded therein and what is denied is the allegation to the contrary. The denial is evasive and the learned Judge is perfectly justified in holding that there is an unequivocal admission of the contents of the documents and what is denied is extent of the admission but the increase in the liability is admitted."

(Underlining supplied)

Therefore, evasive and unspecific denials or vague contradictory pleas are of no consequence given the unequivocal admissions in the pleadings and the documents relied upon by the appellants.

55. In the judgment of the Supreme Court reported at ***(2005) 11 SCC 279 Charanjit Lal Mehra & Ors. v. Kamal Saroj Mahajan (Smt.) & Anr.***, the Supreme Court had held that whether there is any admission on the part of the defendant can be inferred from the facts and circumstances of the case without any dispute, even then in order to expedite and dispose of the case, such an admission can be acted upon. The court noticed that the spirit, intendment and purpose of the legislation was to enable the party to obtain a speedy judgment at least to the extent of the relief to which, according to the admissions of the defendant, the plaintiff is entitled.

56. In order to invoke the provisions of Order XII Rule 6 of the CPC the court has to scrutinize the pleadings in their detail. The court is also required to ignore vague, evasive and unspecific denials and inconsistent pleas in the written statement and replies. Even a contrary stand taken while arguing the matter would require to be ignored. (**Re :** ***AIR 2003 Delhi 142, Rajiv Saluja v. Bhartia Industries Ltd. and Anr.; AIR 2004 Delhi 248 (DB), Rajiv Sharma and Anr. v. Rajiv Gupta***).

57. The findings of the learned Civil Judge in the judgment dated 31st May, 2012 with regard to ownership, the nature of

occupation being that of a licensee as well as termination of license have attained finality. The admissions are also made in the joint written statement and supported by documents filed by the appellants on the suit record. The ownership of the plaintiffs/respondents has been repeatedly admitted in the written statement as well as in the documents filed before the learned Single Judge. The appellants have also admitted the fact that Urmila Devi was inducted as a licensee.

58. These admissions thus bind them in the present suit and would enable the court at any stage of the suit to pronounce the judgment based thereon.

59. It needs no elaboration that while construing an admission, there is no requirement in law that the defendant must state that the plaint is correct. Admissions may be explicit or can be construed. In the case in hand, the admissions are, in fact unconditional, unequivocal and clear. They are contained in pleadings in previous litigation, the written statement of the defendants/appellants as well as documents filed and relied upon by them.

By virtue of Section 58 of the Indian Evidence Act, in view of the admissions of these facts, no proof thereof was required. In this view of the matter and given the above extracted clear admissions by the appellants, so far as the relief of possession is concerned, no triable issue arose for adjudication and the learned Single Judge therefore, had a duty to proceed to judgment.

60. We may also note the observations of the learned Single Judge that the appellants have set up a frivolous and vexatious

defence for the purposes of prolonging their illegal occupancy of the suit property. It was noted that in the plaint dated 22nd February, 2011 in CS No.35/2011, Urmila Devi makes not a whisper of a pleading to suggest execution of any Will by late Shri Ganpat Ram bequeathing part of the suit property in her favour. In the plaint, she set up a plea that late Shri Ganpat Ram "donated" half share of the suit property in her favour.

61. As noted above, according to the appellants, Ganpat Ram became owner of half of the suit property upon intestate demise of his son Bhagat Ram. It is for the first time that in the replication that she propounded an alleged Will claiming that it was executed by Sh. Ganpat Ram in favour of Urmila Devi.

62. We have noted that Bhagat Ram's mother Hukam Kaur is alive even on date and that she would have succeeded to the share of her son as his Class I legal heir. Upon death of Bhagat Ram, Late Shri Ganpat Ram, therefore, acquired no title in the suit property. The appellants therefore, were unmindful of the fact that Late Shri Ganpat Ram, as father of deceased Shri Bhagat Ram, was not his class I heir and therefore, he himself had no right, title or interest in the suit property which he could bequeath. The findings of the learned Civil Judge to this effect have long attained finality.

It has thus been rightly held by the learned Single Judge that, therefore, Late Ganpat Ram could not have donated or bequeathed any portion of the suit property.

Plea of ownership by adverse possession

63. Before us, learned counsel for the appellants would orally press that the appellants have perfected title to the suit property by adverse possession. No such oral plea is permissible. Even if it were permissible, it is necessary to understand the essential ingredients of adverse possession, including the pleadings necessary to support the same as well as the onus and burden of proof thereof.

64. In the judgment reported at ***(1997) 7 SCC 567, D.N. Venkatarayappa & Anr. v. State of Karnataka & Ors.,*** the Supreme Court held thus:

> "3. xxx xxx xxx in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession xxx xxx xxx"

65. The appellants have accepted the title of Bhagat Ram and Laxman Singh to the suit property. They rely on the alleged Will executed by Late Shri Ganpat Ram on the 4th of January 2010 whereby bequest of 50% of the property was allegedly made by him in favour of the appellant Urmila Devi. This Will also mentions Bhagat Ram and Laxman Singh as the owners of the suit property. Therefore, it is the case of the appellants themselves that they had no right to any portion of the suit premises till 2010. There is

nothing on record to show that they ever asserted the title hostile to that of the real owner. Additionally, the appellants admit that they were never in exclusive possession of the suit property but were living in the premises as a licensee of Shri Ganpat Ram till his death in August 2010. They therefore, also never had exclusive possession to any portion of the suit property.

66. It is well settled that continuous occupation of a licensee (even after its termination) does not enable him to claim title by adverse possession. In this regard, in a Division Bench pronouncement reported at ***MANU/DE/0546/2005, Shahabuddin v. State of U.P.,*** it was held thus:

> **"**26. A ***person claiming title by adverse possession has to show that he has asserted hostile title as well as done some overt act to assert such claim. Even mere continuance of unauthorised possession by licensee after termination of license for more than 12 years does not enable a licensee to claim title by adverse possession.*** Ouster of the real owner does not mean actual driving out of the co-sharers from the property. In any case, it will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession.
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> xxx xxx xxx
>
> 28. A claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the real owner, the burden is always on the person who asserts such a claim to plead and prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such a case the Court must have regard to the animus of the person doing such.
>
> xxx xxx xxx
>
> 30. Actual possession without the required animus militates against the claim of title based on adverse

possession. Thus, ***mere unlawful possession does not mean adverse possession.*** A trespasser's possession is adverse to the true owner only when the adverseness of the trespasser's claim is within an owner's knowledge. ***There must be*** on the part of the trespasser, ***an expressed or implied denial of title of a true owner and animus of exclusive ownership.*** (Ref. : *AIR1976 Ori 218 entitled Basanti Dei v. Bijayakrushna Patnaik and Ors.*)

31. So far as property of the State is concerned, the question of a person claiming adverse possession requires to be considered most seriously inasmuch as it ultimately involves destruction of right and title of the State to immovable property conferring upon a third party an encroacher, a title where, he had none. In order to substantiate such a claim of adverse possession, the ingredients of open, hostile and continuous/possession with the required animus should be proved for a continuous period of 30 years.

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59. Person pleading adverse possession has no equities in his favor. 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. In this behalf, reference may be made to the judgment reported at AIR 1996 SC 869 entitled Dr. Mahesh Chand Sharma v. Smt. Raj Kumari Sharma. Para 36 thereof reads as under:-

> "36. In this connection, we may emphasise that a person pleading adverse possession has no equities in his favor. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession. For all the above reasons, the plea of limitation put forward by the appellant or by defendants 2 to 4 as the case may be, is rejected."
>
> (Emphasis supplied)

67. So far as the essential pleadings and evidence to support a claim of acquisition of title by adverse possession is concerned, we may usefully refer to the pronouncement of the Supreme Court reported at ***(1997) 2 SCC 203, Madhvakrishna & Anr. v. Chandra Bhaga & Ors.*** wherein it was held thus :

> "5. In this case, except repeating the title already set up but which was negative in the earlier suit, namely, that they had constructed the house jointly with Mansaram, there is no specific plea of disclaiming the title of the appellants from a particular date, the hostile assertion thereof and then of setting up adverse possession from a particular date to the knowledge of the appellants and of their acquiescence. Under these circumstances, ***unless the title is disclaimed and adverse possession with hostile title to that of the Mansaram and subsequently as against the*** appellant is pleaded and proved, the plea of adverse possession cannot be held proved. In this case, such a plea was not averred nor evidence has been adduced. ***The doctrine of adverse possession would arise only when the party has set up his own adverse title disclaiming the title of the plaintiff and established that he remained exclusively in possession to the knowledge of the appellant's title hostile to their title and that the appellant had acquiesced to the same.***"
>
> (Emphasis supplied)

68. We may also note the nature of pleadings and evidence necessary so far as claim of adverse possession against the State is concerned. The legal position on this issue was summed up by this court in ***MANU/DE/0546/2005, Shahabuddin v. State of U.P.*** in the following terms :

"32. When the property was a vacant land before the alleged construction has been put up, to show open and hostile possession which could alone in law constitutes adverse possession to the State, some ***concrete details of the date of absolute and exclusive occupation, nature of occupation with proof thereof*** would be absolutely necessary and a mere bald assertions cannot by themselves be a substitute for concrete proof required of open and hostile possession. The ***person claiming adverse possession as against the State must disclaim the State's title and plead this hostile claim to the knowledge of the State*** and that the State had not taken any action within the prescribed period. It is only in such circumstances that the possession would become adverse. The pleadings and proof have to be clear and cogent. (Ref. *MANU/SC/0805/1995: (1995) 6 SCC 309. R. Changevarappa v. State of Karnataka : AIR 1997 SC 2930 D.L. D.N. Venkatarayappa and Anr. v. State of Karnataka and Ors. and (2000) 5 SCC 652 entitled State of Rajasthan v. Harphool Singh (dead) the rough his LRs.*)

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35. ***In the light of the above, it is apparent that both pleadings and the evidence has to be clear, unequivocal and specific as to on what date and even in which month the property was occupied and the date of the dispossession of the real owner. All questions relating to the date and nature of a person's possession whether the factum of his possession was known to the owner and the legal claimants and the duration for which such possession has continued and also the question whether the possession was open and undisturbed are all questions of facts and have to be asserted and proved. The attributes of adverse possession is that it begins with dissension or ouster of the owner.*** It remains an "inchoate" title or a growing title till expiration of the statutory period of its continuous open and hostile

assertion and enjoyment. Before title of adverse possession is perfected, all presumptions and intendments are in favor of the real owner. Burden of proving adverse possession is a very heavy one. No court can take the ***plea of acquisition of title by adverse possession casually and it is settled law that much importance should not be attached to the mere evidence of witnesses who casually and cavalierly simple deposed that the land was in possession of somebody and/or another. Mere oral evidence may not be sufficient to substantiate a claim of adverse possession. The party who so pleads must show something more than that.*** In this behalf, reference may be made to the observations made in AIR 1921 Pat 234 entitled Gajadhar Prasad and Ors. v. Musamad Dulhin Gulab Kuer and Ors."

(Emphasis supplied)

69. Reference may also be made to the pronouncement of the Supreme Court reported at ***(2007) 6 SCC 59, P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors.*** wherein placing reliance on the earlier pronouncement in ***AIR 1964 SC 1254, S.M. Karim v. Bibi Sakina,*** it was held thus:

"2. Inquiry into the particulars of adverse possession

31. Inquiry into the ***starting point of adverse possession i.e. dates as to when the paper-owner got dispossessed*** is an important aspect to be considered. In the instant case the starting point of adverse possession and ***other facts*** such as the ***manner in which the possession operationalised, nature of possession***: whether open, continuous, uninterrupted or hostile possession, have not been disclosed. An observation has been made in this regard in *S.M. Karim* v. *Bibi Sakina* [AIR 1964 SC 1254]: (AIR p. 1256, para 5)

"*Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession*

becomes adverse so that the starting point of limitation against the party affected can be found. There is ***no evidence*** here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for 'several 12 years' or that the plaintiff had acquired 'an absolute title' was not enough to raise such a plea. ***Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea.***"

(emphasis supplied)

32. Also ***mention as to the real owner of the property must be specifically*** made in an adverse possession claim."

(Emphasis by us)

70. On the same aspect, in ***(2004) 10 SCC 779, Karnataka Board of Wakf v. Government of India & Ors.,*** the court held thus:

"*11*. 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. Non-use 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.*** (See *S.M. Karim* v. *Bibi Sakina* [AIR 1964 SC 1254], *Parsinni* v. *Sukhi* [(1993) 4 SCC 375] and *D.N.*

> *Venkatarayappa* v. *State of Karnataka* [(1997) 7 SCC 567].) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. 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***."
>
> (Emphasis by us)

71. In ***(2007) 6 SCC 59, P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors.,*** reliance was also placed on the pronouncement of the Supreme Court reported at ***(2005) 8 SCC 330, Saroop Singh v. Banto & Ors.*** wherein it was held thus:

> *"30.* '*Animus possidendi*' is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See: *Mohd. Mohd. Ali*v. *Jagadish Kalita* [(2004) 1 SCC 271], SCC para 21.)"

72. In a pronouncement of the Supreme Court reported at ***(2006) 7 SCC 570, T. Anjanappa & Ors. v. Somalingappa & Anr.***, it was held thus:

"14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. ***Possession is not held to be adverse if it can be referred to a lawful title.*** The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:

> "*14*. … Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner. Under Article 65 [of the Limitation Act,] burden is on the defendants to prove affirmatively. ***A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed***. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. …
>
> *15*. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a ***person who enters into possession having a lawful title, cannot divest another of that title by***

pretending that he had no title at all. (See : *Annasaheb Bapusaheb Patil* v. *Balwant* [(1995) 2 SCC 543, p. 554 : AIR 1995 SC 895, p. 902] , SCC p. 554, paras 14-15.)

xxx xxx xxx

20. It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in ***denial of the true owner's title must be peaceful, open and continuous.*** The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

(Emphasis by us)

73. In the instant case, the appellants have asserted lawful entry into the suit premises and have set up contradictory claims of acquisition of title ('prescription'/'donation'/'bequest'). In this regard, the relevant portion of the pronouncement of the Supreme Court reported at ***(2009) 13 SCC 229, L.N. Aswathama & Anr. v. P. Prakash*** may usefully be extracted which reads as follows:

"16. The plaintiffs contended that the plea of adverse possession put forth by the defendant should fail in view of the inconsistent stands taken by the defendant. It is pointed out that the defendant had specifically contended that he was the tenant of the schedule property from 1962 until he purchased the property on

18-11-1985. According to the plaintiffs, this was a ***case of permissive possession and not adverse possession***. It is submitted that the defendant having put forth a case of permissive possession, cannot put forth a plea of adverse possession. It was submitted that even assuming that there was a ***long and continuous possession*** for more than 12 years, that ***by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi***. According to them, the two pleas being mutually inconsistent, the latter plea could not even begin to operate until the former was renounced. Reliance was placed on the following observations of this Court in ***Mohan Lal* v. *Mirza Abdul Gaffar* [*(1996) 1 SCC 639***] made while considering a case where the ***defendant raised the pleas of permissive possession and adverse possession***: (SCC pp. 640-41, para 4)

> "*4*. As regards the first plea, it is ***inconsistent with the second plea. Having come into possession under the [sale] agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor-in-title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period of his title by prescription nec vi, nec clam, nec precario [not by violence, not by stealth, not by permission]. Since the appellant's claim*** is founded on Section 53-A [of the Transfer of Property Act, 1882], it goes without saying that he ***admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant***."
>
> (emphasis supplied)

> **17.** The legal position is no doubt well settled. To ***establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi***. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. ***Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence***. (Vide *P. Periasami* v. *P. Periathambi* [(1995) 6 SCC 523] , *Md. Mohammad Ali* v. *Jagadish Kalita* [(2004) 1 SCC 271] and *P.T. Munichikkanna Reddy* v. *Revamma* [(2007) 6 SCC 59].)"
>
> (Emphasis by us)

74. The appellants have never asserted acquisition of title. They did not do so even in CS No.35/2011. They do not state the date on which they entered the property or when their occupation became hostile to the real owner. Conflicting claims of ownership have been set up as also entitlement to only half of the property without stating what constitutes 50% portion of the property over which they are claiming possession as has been noticed by the learned Civil Judge.

75. Reference may also be made to the Division Bench pronouncement of this court reported at ***2011 SCC OnLine Del 1313 : 2011 (3) ILR (Del) 318, Rustam Decd Thr. LRs v. Jamia Milia Islamia University & Ors.*** relevant portion of which is reproduced hereunder:

> **"7.** The ethos of the impugned judgment is that claim for adverse possession or title by prescription is established only when the claimant is in actual physical possession, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding 12 years. ***Mere long and continuous possession by itself does not constitute adverse possession, if it is either permissive possession or possession without possendendi.*** Relying upon the judgment reported as JT 2009 (9) SC 527 *Lnaswathama* v. *P. Prakash,* the learned Single Judge has held that unless person in possession shows requisite animus to possess the property, hostile to the title of the owner, period of prescription does not commence.
>
> xxx xxx xxx
>
> **12.** It strikes the reader that the pleas required to be advanced as per the decision reported as 2004 (10) SCC 779*Karnataka Board of Wakf* v. *Government of India* are wanting and thus the appellants are liable to be non-suited on said count alone. ***Suffice would it be to state that evidence sans a plea is meaningless. The principle of law prohibiting variance between pleading and proof compels us to do so.***"
>
> (Emphasis supplied)

The position in the present case is the same.

76. In ***AIR 1984 SC 930, Gaya Parshad Dikshit v. Dr. Nirmal Chander & Anr.,*** it was held that mere termination of the licence of a licencee does not enable the licencee to claim adverse possession, unless and until he sets up a title hostile to that of the licensor after termination of his licence. It is not merely unauthorized possession on termination of his licence that enables the licensee to claim title by adverse possession, but there must be some overt act on the part of the licencee to show that he is claiming adverse possession. Mere continuance of unauthorized possession even for a period of more than 12 years is not enough.

77. In ***AIR 1954 SC 758, Sheodhari Rai & Ors. v. Suraj Prasad Singh & Ors.,*** it was held that permissive possession cannot be treated as adverse possession till the defendant asserts an adverse possession.

78. In ***AIR 1995 SC 895, Annasaheb Bapusaheb Patil & Ors. v. Balwant @ Balasaheb Babusaheb Patil (dead) by LRs & heirs, etc.,*** it was held by the Supreme Court that adverse possession means a hostile assertion, i.e., a possession which is expressly or impliedly in denial of the title of the true owner and held that under Article 65 of the Limitation Act, 1963, the burden is on the defendants to prove affirmatively.

79. In ***AIR 1995 SC 73, Thakur Kishan Singh (dead) v. Arvind Kumar,*** it was held that where the possession was initially permissive, the burden was heavy on the appellant to

establish that it became adverse. Mere possession for howsoever length of time does not result in converting permissive possession into adverse possession.

80. Mr. Raman Gandhi, learned counsel for the appellants has relied on the judgment of the Supreme Court reported at ***(2006) 7 SCC 570, T. Anjanappa & Ors. v. Somalingappa & Anr.*** in support of his submission that the appellants in hand would be deemed to be in adverse possession since inception of the occupation. A unique proposition is thus propounded by learned counsel for the appellants which is not supported by the judicial precedent relied upon. In fact, in this judgment, the Supreme Court has rejected such a plea overturning the decision of the High Court to the contrary. In paras 16 and 17, the court stated thus:

> **"16.** It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is ***adverse to the true owner***. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the ***true owner*** and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The ***classical requirements*** of acquisition of title by adverse possession are that such possession in ***denial of the true owner's title*** must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.

> **17.** ***The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession*** have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. …"
>
> (Emphasis supplied)

In the present case as well, after admitting the title of the respondents, the appellants have tried to suggest that Ganpat Ram was the owner or that the government was the true owner of the property whereas, acquisition of title by adverse possession is being pressed against the respondents. On application of the principles laid down in this judgment as well, the appellants have failed to establish that they acquired title of the property by adverse possession.

81. In the present case, the appellants give no date on which they came to occupy any portion of the property. They admit the title of Bhagat Ram and Laxman Singh to the suit property. It is also their case that till his death on 16th August, 2010, Ganpat Ram was residing in the property and the appellants were residing with him. It is also an admitted position that the appellants have never made a claim of acquisition of title by adverse possession of the suit property. They never asserted a title hostile to that of the real

owners. It is well settled that a claim of title by adverse possession cannot be made for the first time in court.

82. So far as the right premised on occupation by prescription is concerned, the order dated 16th August, 2011 passed by the learned Civil Judge dismissing Urmila Devi's injunction application had held that "*prescription only related to the right to use the property of another i.e. consistent with the rights of the owner*". It did not entail creation of title over the property as opposed to adverse possession. The appellants therefore could not have acquired title merely on the basis of their plea of prescription extending over eighteen years over the suit property.

83. No plea of acquisition of title by adverse possession has been set up. The appellants have not pleaded even the basic ingredients of adverse possession. No date, even year, on which the appellants came to occupy the suit property has been pleaded. No date on which their possession became adverse to that of the real owners has also been pleaded. In fact, the appellants have never claimed to be owners of the suit property or asserted title to the suit property.

84. The appellants have also asserted induction into the property as a licencee which was permissible in nature. Such an occupant cannot claim perfection of title by adverse possession.

85. As is evident from the above extract of their pleadings and the above discussion, the appellants never had exclusive occupation of the suit premises inasmuch as it is their case that they were residing with Late Shri Ganpat Ram till his death on 21st

August, 2010, who according to the appellants was the owner of the property.

86. By the order dated 31st May, 2012 the learned Civil Judge in CS No. 35/2011 has noted that according to Urmila Devi, Shri Ganpat Ram was residing with Smt. Urmila Devi and her family and that according to her, he died in the suit premises on 20th October, 2010. The learned Judge has thereupon returned a categorical finding that the possession of the appellant was neither exclusive nor hostile. This finding has attained finality.

87. Even in the written statement filed before the learned Single Judge in CS(OS) No.3275/2012, the plaintiff admits induction into the premises by Late Shri Ganpat Ram with whom the appellants claim joint occupation. Contradictory pleas of ownership based on a plea of prescription and occupancy of the premises for more than eighteen years and under a testamentary bequest made by Late Shri Ganpat Ram have been made. Finally, despite admissions of every relevant fact, a plea of desperation urging that the respondents had no title to the property and that Ganpat Ram was a trespasser has been raised for the first time in the written statement in the present suit has been taken.

88. Mr. Saurabh Tiwari, learned counsel for the respondents has also urged that the pleas of the appellant of being in occupation as a licensee and the contention of having acquired title by adverse possession are mutually destructive pleas which are impermissible. In this regard, reliance is placed on the pronouncement in ***(2009) 9 SCC 713, Vimal Chandghevar Jain v. Ramakant Eknath Jadu***

wherein in para 25, it was held that "*pleadings of the parties, it is trite, are required to be read as a whole. The defendants, although are entitled to raise alternative and inconsistent plea but should not be permitted to raise pleas which are mutually destructive of each other*".

89. It is noteworthy that the plaint in CS No.35/2011 came to be rejected by an order dated 31st May, 2012 by the learned Civil Judge. Against this judgment, an appeal being RCA No.29/2012 was filed on 22nd August, 2012 by Urmila Devi. At point 'P' of the appeal, Urmila Devi repeats that "*because of the title of the suit is in favour of Laxman and Bhagat and Bhagat was expired about 20 years ago and Laxman is mentally disturb and not executed any documents in favour of the other respondent*." The appellant has even on 22nd August, 2012 unequivocally admitted the title of Laxman Singh and his brother Bhagat Singh.

90. In the present suit, on 5th April, 2013, the appellants have also filed on record eleven bills/notices issued by BSES Rajdhani Power Limited in the name of Laxman Singh in respect of the suit property dated 24th January, 2010, 22nd March, 2010, 25th July, 2010, 24th September, 2010, 14th October, 2010, 24th November, 2010, 17th January, 2011, 15th November, 2011, 5th May, 2012, 29th June, 2012, 30th August, 2012 and 28th December, 2012) raising demands for payment in connection with the electricity. These documents contain the admission by both the appellants of the rights and interest of Laxman Singh in the suit property.

91. The appellants have relied upon an electoral roll for the year 2013 which shows them resident of House No.D/2/39, Gali No.2, Block – D, Sangam Vihar, New Delhi. This would suggest that the appellants are not residing at the suit property but have some other property in Sangam Vihar.

92. It is noteworthy that in the oral plea and submissions thereon made before this court, the appellants have asserted perfection of title by adverse possession against the respondents herein. In pressing this plea, there is an inherent admission that the respondents are the real owners of the suit property.

93. Coupled with the unequivocal admission of title of the respondents by the appellants; the reliance on "*donation*" in one place and "*bequest*" in another, of half of the suit property by Ganpat Ram in favour of the appellant Urmila Devi, also render false and inconsequential the plea of acquisition of title by adverse possession taken by the appellants for the first time in the oral arguments in the present appeal.

Denial of title of respondents

94. In the written statement before the learned Single Judge, a half baked plea that the property was owned by the Government has been set up. No details of the government which owns the property or document to support the same are filed on record. This plea also completely demolishes any claim of acquisition of title by adverse possession as the appellants do not claim assertion of title ever against any government.

95. Furthermore, the appellants have raised the claim of adverse possession on occupancy of 18 years. As per Article 65 of the Schedule of the Limitation Act, so far as claim of adverse possession against the State is concerned, the same could be premised on exclusive and absolute possession of 30 years. The appellants do not claim occupancy of thirty years. Therefore, the effort to cloud the title of the respondents is really an arrow shot in the dark by the appellants.

96. This vague and unsupported plea is completely belied when tested against the clear admissions of title made by Urmila Devi.

97. The learned Single Judge has additionally relied on Section 116 of the Evidence Act which clearly states that "*no person who came upon in immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when license was given*". Placing reliance on the pronouncements of the Supreme Court reported at ***(2006) 3 SCC 91, Bansraj Laltaprasad Mishra v. Stanley Parker Jones; (2002) 7 SCC 505, Sri S.K. Sarma v. Mahesh Kumar Verma*** ; ***2006 (130) DLT 667, Vishal Builders Pvt. Ltd. v. Delhi Development Authority & Ors.*** and; ***2006 (130) DLT 120, Desh Raj Singh v. Triveni Engineering & Ndustries Ltd. & Anr.,*** the learned Single Judge has concluded that no person who comes into possession of immoveable property on the basis of license or permission of the person in possession thereof can be permitted to deny that such person had a title to such property when such license was given. As a consequence, the appellants

who admit that they were permitted to suit property as a licensee by Shri Ganpat Ram, cannot challenge his title eighteen years after they were so inducted.

98. In ***Bansraj Laltaprasad Mishra,*** the Supreme Court had discussed the policy of Section 116 and the principle on which it was premised in the following terms:

> **"12.** The "possession" in the instant case relates to the second limb of the section. It is couched in negative terms and mandates that a person who comes upon any immovable property by the licence of the person in possession thereof, shall not be permitted to deny that such person had title to such possession at the time when such licence was given.
>
> **13.** The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.
>
> **14.** The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.
>
> **15.** Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no

person is allowed to approbate and reprobate at the same time.

16. As laid down by the Privy Council in *Kumar Krishna Prosad Lal Singha Deo*v. *Baraboni Coal Concern Ltd.* [64 IA 311 : AIR 1937 PC 251] : (IA p. 318)

> "It [Section 116] deals with one cardinal and simple estoppel, and states it first as applicable between landlord and tenant and then as between licensor and licensee, a distinction which corresponds to that between the parties to an action for rent and the parties to an action for use and occupation."

17. Obviously, the stress is on the possession of the person who is in possession of the immovable property. Unfortunately, the Division Bench has not addressed itself to this question which according to us was the core question.

18. The Division Bench erroneously laid stress on title as indicated above which has no relevance in the background of what is stated in Section 116 of the Evidence Act. The Division Bench disposed of the matter without even discussing as to why the learned Single Judge was not justified in the conclusions arrived at. Therefore, we remand the matter to the Division Bench for fresh hearing and disposal. However, we make it clear that we have not expressed any final opinion on the merits of the case. As the matter is pending since long, we request the High Court to dispose of the matter within three months. The interim order passed in this appeal shall continue till the disposal of the matter by the High Court."

(Underlining by us)

99. Mr. Raman Gandhi, learned counsel for the appellants has placed reliance on the pronouncement of the Supreme Court reported at ***AIR 1987 SC 2192, D. Satyanarayana v. P. Jagadish***,

in support of his contention that Section 116 of the Evidence Act has no application to the instant case. This judgment has no application to the present case as it involved an issue of a notice of eviction being served by the paramount title holder of the premises on the sub-tenant. The sub-tenant had attorned in favour of the paramount title holder and stopped paying rent to the tenant who had inducted him in the premises. It was held that Section 116 would have an application in support of the tenant who filed an eviction petition against a sub-tenant in the given facts. There is no parity between this case and the facts in the present case.

A similar view was taken by the Supreme Court in the case reported at ***AIR 2002 SC 3294, Sh. S.K. Sarma v. Mahesh Kumar Verma.***

100. Before us as well, the appellants have attempted to confuse the issue by referring to 'title' as if it was synonymous with 'possession' which is clearly not permissible given their clear stand that Urmila Devi was inducted as a licensee in the suit property by Late Shri Ganpat Ram who was admittedly himself a licencee of his sons. It is their case that Ganpat Ram did so as he treated her like a daughter.

101. The judgment of the Supreme Court in ***(2012) 1 SCC 656, Suraj Lamps and Industries Pvt. Ltd. v. State of Haryana & Anr.*** has prospective effect and cannot affect transactions already effected. The reliance thereon to challenge title is misconceived.

102. So far as the objection to the documents is concerned, learned counsel for the respondent has placed reliance on the

pronouncement reported at ***(2003) 8 SCC 752, R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr.*** In para 20 of this judgment, the court has laid down the test with regard to the objection as to the admissibility of a document in the following terms:

> **"20.** The learned counsel for the defendant-respondent has relied on *Roman Catholic Mission* v. *State of Madras* [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. ***The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards themode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision.*** In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. ***The crucial test is whether an objection, if taken at the***

appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. ***Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document*** itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."

(Emphasis supplied)

In the present case, the documents which stand exhibited have been filed not by the respondents but by the appellants.

103. We may point out that the appellants have taken such plea unmindful of the fact that the documents of title filed by them reflect that Bhagat Ram and Laxman Singh had acquired a plot of land whereas the appellants were permitted by Ganpat Ram to occupy part of the suit property which is a built up property. The

appellants have rightly laid not a whisper of a challenge to the ownership of the building which is the subject matter of the suit.

Impact of findings in previous adjudication

104. Apart from the above, in the previous litigation initiated by Urmila Devi, certain findings and orders have attained finality and bind her. By the order dated 31st May, 2012 passed by Ms. Ritu Singh, Civil Judge -04 (South), Saket Court Complex, New Delhi in CS No.35/2011 ***Smt. Urmila Devi v. Smt. Bimla Devi & Ors.*** allowed the application of the defendants under Order VII Rule 11 of the CPC and rejected the plaint holding as follows :

> "6. During the course of arguments Ld. Counsel for the ***plaintiff has admitted that plaintiff was admitted as licensee in the suit property and has been residing in this capacity for more than 19 years*** and the same fact has been mentioned in the plaint in ***Para 3 of the plaint***, wherein plaintiff has stated that ***plaintiff was allowed by Late Sh. Ganpat Ram to reside in the plot***.
>
> 7. Counsel for defendant has stated that plaintiff in his plaint has stated that he was in possession of suit property "*as he was allowed"* by Late Sh. Ganpat Ram as mere licensee and therefore his license is liable to be revoked at any time. To support his submission, the counsel of the plaintiff relied on the case of Hon'ble Delhi High Court in Chandu Lal Vs. MCD, 15, DLT (1979) 168 to state that:

"After termination of the license licensor is entitled to deal with the property as he likes. On revocation of license, licensee seize to enjoy the liberty to continue to occupy the property so licensed."

8. Further, counsel for the defendant has stated that the license of the defendant stands terminated on filing of this suit and further admission made by the plaintiff in his plaint that defendant are trying to dispossess the plaintiff tantamount to revocation of the license of the plaintiff and as such once there is revocation of license, plaintiff has no further right to possession in respect of the suit property and he is merely a trespasser. Counsel for the plaintiff has relied on the case *DTTDC Vs. D.R. Mehra, 1996 AIR (Del.) 351* to state that *a licensee whose license has been revoked, if he continues to be in possession of the property he shall be deemed to be a trespasser.*

9. In view of submission of the parties, judgments relied upon by parties and pleadings, this court is of view that ***as plaintiff has admitted that his possession of suit property is that as a licensee, therefore, threats from defendant to remove him from suit property by defendant herein, who are successors-in-title of the owner/licensor is a deemed revocation of his license. After revocation of the license, licensee cannot claim any right in the property and cannot seek protection of his possession by permanent injunction.*** Therefore, this suit for permanent injunction against defendant to restrain defendants from creating third party interest or dispossessing the plaintiff whose license has been revoked is without cause of action."

(Emphasis supplied)

The appeals assailing the above judgment (RCA No.29/2012 before the District Judge and RSA No.30/2013 before this court) stand rejected. This finding that Urmila Devi was a licencee and the licence stood revoked have attained finality and would bind any consideration of the rights of Urmila Devi in the suit property.

105. Placing reliance on the pronouncement of the Supreme Court reported at ***(1999) 3 SCC 145, Wali Mohammed (Dead) by LRs. v. Rahmat Bee & Ors.; (2005) 6 SCC 202, Annaimuthu Thevar (Dead) by LRs. v. Alagammal & Ors.*** and ***(1997) 2 SCC 203, Madhavkrishna & Anr. v. Chandra Bhaga & Ors.***, it is further urged that given the clear plea in the previous suit (CS No.35/2011) by Urmila Devi that she was inducted as a licensee by Late Shri Ganpat Ram in the suit premises and the above findings, she cannot be permitted to set up a plea of ownership by adverse possession by application of principles of constructive res judicata contained in Section 11 Explanation IV of the Code of Civil Procedure.

106. We have extracted above the pleas of Urmila Devi as well as the findings of the trial court thereon which have attained finality. We have also noted the clear finding against the appellant that her license to occupy the suit premises stood terminated. Even if a plea of having perfected title by adverse possession had been taken in the written statement, the same was clearly barred by application of principles of constructive res judicata against the defendants.

Termination of licence - effect

We now come to the findings of the Learned Single Judge on the question that given the termination of the licence of the appellants in the manner, what would be their right to continue to occupy the suit property?

107. Let us see how the expression licence is defined and understood in a Full Bench decision of the Bombay High Court reported at ***MANU/MH/0692/2007 : 2007 SCC OnLine Bom 602: (2007) 5 Bom Cr 1*** **(page 320),** ***Prabhudas Damodar Kotecha and Anr v. Smt. Manharbala Jeram Damodar and Ors.*** The court construed the essential constituents of a licence as in Section 52 of the Indian Easement Act thus:

> **"45.** As opposed to this, the expression "licence", as defined under section 52 of the Indian Easement Act, provides that where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to easement or an interest in the property, the right is called a license. ***Section 52 does not require any consideration, material or non-material, to be an element of the definition of licence, nor does it require that the right under the licence must arise by way of contract or as a result of a mutual promise. Thus, licence as defined in section 52 of the Indian Easement Act can be a unilateral grant and unsupported by any consideration***. The Supreme Court in *State of Punjab* v. *Brig. Sukhjit Singh*, 1993 (3) SCC 459 has observed that, "payment of licence

fee is not an essential attribute for subsistence of licence".

46. Let us see as to how the expressions "licence" and "licensee" are understood, used and spoken in common parlance. It is often said that a word, apart from having the meaning as defined under different statutes, has ordinary or popular meaning and that a word of everyday usage it must be construed in its popular sense, meaning that sense which people conversant with the subject matter with which the statute is dealing would attribute to it. A "licence" is a power or authority to do some act, which, without such authority, could not lawfully be done. ***In the context of an immovable property a "licence" is an authority to do an act which would otherwise be a trespass. It passes no interest, and does not amount to a demise, nor does it give the licensee an exclusive right to use the property. [See Puran Singh Sahani v. Sundari Bhagwandas Kriplani, (1991) 2 SCC 180]***. *Barron's Law Dictionary* has given the meaning of word "licensee" to mean "the one to whom a licence has been granted; in property, one whose presence on the premises is not invited but tolerated. ***Thus, a licensee is a person who is neither a customer, nor a servant, nor a trespasser, and does not stand in any contractual relation with the owner of the premises, and who is permitted expressly or impliedly to go thereon usually for his own interest, convenience, or gratification***". *Stroud's Judicial Dictionary of Words and Phrases*, Sixth Edition, Vol. 2, provides the meaning of word "licensee" to mean "a licensee is a person who has permission to do an act which without such permission would be unlawful. [See Vaughan C.J., in*Thomas* v. *Sewell, Vaugh* at page 330, at page 351, quoted by Romour, J, in *Frank Warr and Co.* v. *London County Council*, (1940) 1 K.B. 713]." In *Black's Law Dictionary*, Seventh

> Edition, the word ***"licence" means "a revocable permission to commit some act that would otherwise be unlawful"*** and the word "licensee" means "one to whom a licence is granted or one who has permission to enter or use another's premises, but only for one's own purposes and not for the occupier's benefit." Thus, it is seen that even in popular sense the word "licence" is not understood to mean it should be on payment of licence fee for subsistence of licence. It also covers a "gratuitous licensee", that is, a person who is permitted, although not invited, to enter another's property and who provides no consideration in exchange for such permission."
>
> (Emphasis by us)

108. So far as the rights of a licensee are concerned, it is well settled that once a licensee, always a licensee. This position does not change even upon termination of the license. The courts have held that even a suit for mandatory injunction compelling the licensee to surrender possession upon termination of licence is maintainable. In this regard, the learned Single Judge has relied upon ***(1985) 2 SCC 332, Sant Lal Jain v. Avtar Singh*** wherein it was held as follows :-

> "6. ....In *Milkha Singh v. Diana*, it has been observed that the principle once a licensee always a licensee would apply to all kinds of licenses and that it cannot be said that the moment the license it terminated, the licensee's possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J. as he then was) speaking for the Division Bench has observed :
>
> > ***After the termination of license, the licensee is under a clear obligation to surrender his possession to the owner*** and if he fails to do so,

> we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under s. 55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable."
>
> (Emphasis by us)

109. In this regard, the learned Single Judge has also relied on the following observations in the Division Bench pronouncement of this court reported at ***AIR 1978 Delhi 174 Chandu Lal v. Municipal Corporation of Delhi*** wherein, the rights of the licensor, after the termination of the licence, have been recognized thus :

> "26. ....A mere licensee has only a right to use the property. Such a right does not amount to an easement or an interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He need not secure a decree of the court to obtain the right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser.....
> 27. In the instant cases the petitioners' possession of the premises (Kiosk) on the facts and circumstances of the case, cannot be held to be conclusive evidence of their being a lessee as the grant was not coupled with an interest in the property. The principle once a licensee always a licensee applies proprio vigore in these cases.…"
>
> (Underlining by us)

110. It is the appellants case herein that Shri Ganpat Ram treated Urmila Devi as his daughter and permitted her to occupy the suit property. Urmila Devi has throughout asserted not only that she was permitted to occupy as licencee but the bequest under the Will set up by the appellants is also only in her favour. She has asserted sole title, possession and entitlement to relief. Her husband has resided in the suit property only as a member of Urmila Devi's family. Urmila Devi's husband has not set up any independent claim inasmuch. Even the present written statement, as the appellants have jointly claimed under the Will allegedly executed by Late Shri Ganpat Ram in favour of Urmila Devi.

111. It is an admitted position that Urmila Devi was given a permissive license by Shri Ganpat Ram to occupy the part of the suit property. Her husband Subhash Kumar has claimed occupation because of his relationship with her. They have filed a joint written statement and have placed reliance on the alleged Will dated 4th January, 2010 which they claim was executed by Shri Ganpat Ram in favour of Urmila Devi. The family members of Urmila Devi have no independent right in or to occupy the suit property.

112. In view of the above facts and circumstances, the learned Single Judge has rightly noted that the written statement of the defendants fails to bring out any right, title or interest of the appellants/defendants to continue to remain in occupation of the suit property. No issue arose or remained for adjudication. The

learned Single Judge had, therefore, no option in the matter and has rightly proceeded to judgment.

Irrevocable licence

113. We may note that in the present appeal, the appellants have attempted to claim for the first time in the grounds that Ganpat Ram was in possession of the suit property in the capacity of "*a licensee of his sons but having an interest in the suit property and making it an irrevocable license as per Section 60 of the Easement Act*". The appellants have urged that Ganpat Ram had independent and exclusive occupation hostile to the rest of the world over the suit property including his family and pressed the question that as to whether Ganpat Ram had himself perfected his "adverse possession" in the suit property. As noted above, independent title and exclusive occupation of Ganpat Ram was never the plea of the appellants herein in any proceedings. There was no such pleading in the written statement. It has been the consistent stand of the appellants that Ganpat Ram became owner of 50% of the property upon the intestate demise of his son who was the owner thereof. The appellants rely on the aforesaid Will wherein, according to them, Ganpat Ram himself made a declaration in these terms. The same stands judicially adjudicated in the prior litigation. The appellants are bound thus not only by their admissions but by the judicial findings against them. The appellants are bound by their admissions noted above and stand precluded from setting up a contrary plea.

This plea is clearly devoid of any legal merit and has to be rejected.

Reliance on the alleged testamentary bequest by Late Shri Ganpat Ram

114. The respondents have not admitted the execution of the Will of three pages dated 4th January, 2010 propounded by the appellants, unsigned on all pages except the last page which contains two signatures in the Devnagri script. The respondents challenge the address of Ganpat Ram (that of the suit property) on the said Will. The appellants contend that Shri Ganpat Ram was residing with them, his own family, in Govind Puri and that he never signed in Devnagri. Copies of several letters signed by Shri Ganpat Ram in English, his income tax returns and cheque book have been placed on record. The learned counsel for the respondents would submit that even the two signatures attributed to Ganpat Ram in Hindi on the last page of the document propounded by the appellants as his Will do not match.

115. To support residence of Ganpat Ram in Govind Puri, the appellants have filed the driving licence and PAN card of Shri Ganpat Ram. The respondents have also relied on the death certificate of Shri Ganpat Ram which shows that he was residing at 15/1639, Govind Puri, Kalkaji, New Delhi at the time of his death on 21st August, 2010. It is submitted that the appellants do not even know or state the correct date of death of Late Shri Ganpat Ram in any of their pleadings. It is completely unnecessary for us

to go into these issues given the above discussion so far as the admissions of the appellants and the rights in the suit property are concerned. It is also contended that the appellants have shown two witnesses to the alleged Will, the first being one Mohd. Athar resident of Shakarpur, Delhi-110092 while the other is Mr. Om Prakash resident of Kalyan Puri, Delhi-110091. The respondents would submit that Shri Ganpat Ram did not know any such persons.

116. In the instant case, given the admissions noted by us have been made by the appellants in pleadings which are on the apparent condition that evidence of such pleading would be given and would bind her (Section 23 under Evidence Act) not only in the civil suit filed by her but in all cases where she is a party. Given the applicable principles of law, the learned Single Judge had no option but to proceed in the matter on the admissions noted above.

117. The appellants failed to comply with the order dated 25th April, 2013 for recording their statement despite repeated opportunities under Order X CPC read with Section 165 of the Indian Evidence Act. On their request, the matter was repeatedly adjourned without their making the statement. The appellants did not even appear on 8th November, 2013 in court. The suit was thus liable to be decreed even under the provisions of Order X Rule 4(ii) of the CPC which enables the court to pronounce judgment against a party who fails to appear in person to make the statement under this statutory provision. Yet the learned Single Judge has proceeded to examine the matter on the merits of the controversy.

Costs of the litigation

118. We now come to a very important aspect of the litigation. It is the stand of the appellants that they are occupying the 200 sqr.yds. of valuable built-up property in Sangam Vihar, a colony located in South Delhi. They claim to be in possession of eight rooms, certainly not a small piece of construction. In the suit filed by her, Urmila Devi was claiming over only half of the suit property. Yet before us, the appellants are not willing to vacate any portion thereof.

119. The respondents before us have submitted that Urmila Devi was permitted to occupy one room in the property with a family and has illegally trespassed into the rest of the property. Urmila Devi claims that Ganpat Ram, father of the owners of the suit property treated her like a daughter and permitted her to occupy the same and that she has today been living in the property for over 18 years, admittedly without payment of a single penny.

120. The legal principles which have been placed before us are well settled in specific statutory provision as well as by judicial precedents. The same have been relied upon by the learned Civil Judge in rejecting the plaint filed by Urmila Devi on 31st May, 2012 whereby she had sought an injunction prohibiting dispossession by the children of Shri Ganpat Ram. Those findings have also attained finality.

121. During the course of hearing, in the present appeal, we had repeatedly put the well settled legal position to both, counsels for the appellants as well as Urmila Devi who personally attended the hearings. Even before we reserved judgment on conclusion of arguments, a completely belligerent stand was taken before us and opportunities to explore alternative dispute redressal were stoutly rejected by them. Without consideration of merits of her case, Urmila Devi stated that she will test her luck before the higher court.

122. Without in any manner being prejudiced by the stand of the litigant who is entitled to test the merits of his or her case in all courts, we proceeded to give full hearing to the parties in the instant case and have penned the above judgment uninfluenced by the above stand of the appellants. It, however, needs no elaboration that it is the duty of every person to only put forth a stand which is legally tenable in support of a fair and just claim. Speculative litigation has to be discouraged and this solemn duty rests not only on courts but also on all legal experts as well as the litigants. Therefore, we cannot refrain from expressing our anguish that despite the clear legal position, completely unnecessary litigation has been generated.

123. In the instant case, the desire of the appellants to acquire the property of the respondents by hook or crook has already generated two suits (CS No.35/2011 & CS(OS) No. 3275/2012) as well as three appeals [RCA No.29/2012, RSA No.30/13 and RFA (OS) No.85/2014 (present appeal)]. The inquiry into mesne profits is

still pending on the original side. The trial courts as well as this court has, therefore, been burdened with frivolous litigation or protraction of litigation as tool by unscrupulous litigants as the appellants attempting to perpetuate wrongful possession of property over the other side, despite termination of licence. They are thereby aggravating the burden on the already overburdened legal system. Much judicial time has been unwarrantedly caused to be expended on the cases in which the facts as well as the legal position is unambiguous, well settled and leave no room for doubt. The litigation is, therefore both frivolous and vexatious.

124. In these circumstances, we are of the view that the present appeal was completely misconceived and based on factually and legally untenable grounds and the appellants must be burdened with exemplary costs.

125. We propose to extract hereafter the legal position on consideration of the issue of propriety of imposing costs and the quantum thereof. In a judgment dated 19th October, 2006 rendered by one of us (Gita Mittal, J.) in ***CCPO 130/2005 in OMP No.361/2004 Goyal MG Gases Pvt. Ltd. V. Air Liquide Deutschland Gmbh & Ors.,*** the principles and judicial precedents were extracted in the following terms :-

> "60. Vexatious and frivolous litigation poses a number of threats to the efficient operation of any civil justice system. Those threats stem from the manner in which the vexatious and frivolous litigant conducts litigation before the courts. Such proceedings, apart, from the oppression and the harassment inflicted on the

adversary, are extremely damaging to public interest. Judicial resources are valuable and scarce. The resources of the court are not infinite, especially in terms of judicial time. Therefore, administration of justice and interests of equity and fair play mandate that a party which succeeds is compensated by award of costs in respect of false or vexatious claims or defenses. A faulting party may be required to pay to the other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date and payment of such costs on the next date following the date of such order if unreasonable adjournments are taken by the parties.

However, many unscrupulous parties take advantage of the fact that either costs are not awarded or nominal costs alone are awarded against the unsuccessful party.

61. The legislature has recognised the need for imposition of costs and consequently, so far as the civil proceedings are concerned, has enacted Section 35 of the Code of Civil Procedure which provides for imposition of costs. The Apex Court was concerned with the manner in which the costs are imposed resulting in undue advantage being taken by parties of the fact that notional costs are awarded which do not deter or discourage persons from filing vexatious or frivolous claims or defenses. In this behalf, in ***Salem Advocate Bar Association v. Union of India***, the court observed thus:

> "37. Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In a large number of cases, such an order is

> passed despite Section 35(2) of the Code. Such a practice also encourages the filing of frivolous suits. It also leads to the taking up of frivolous defenses. Further, wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons therefore. The costs have to be actual reasonable costs including the cost of the time spent by the unsuccessful party, the transportation and lodging, if any, or any other incidental costs besides the payment of the court fee, lawyer's fee, typing and other costs in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow."

62. However, there are several proceedings which are not governed by the Code of Civil Procedure. The courts have recognised the inherent power of the court to award costs in the interest of justice.

63. In ***(2006) 4 SCC 683 State of Karnataka v. All India Manufacturers Organisation***, a challenge was laid to a common judgment of the High Court of Karnataka disposing of three public interest litigations whereby a direction was issued to the State of Karnataka to continue to implement a certain project known as the "Bangalore-Mysore Infrastructure Corridor Project". While dismissing the appeals, the Apex Court held that there was no merit in them. It was further directed that:

> "Considering the frivolous argument and the mala fides with which the State of Karnataka and its instrumentalities have conducted this litigation before the High Court and us, it shall pay Nandi

costs quantified at Rs. 5,00,000/-, within a period of four weeks of this order.

The appellants in CA No. 3497/2005 (J.C. Madhuswami and Ors.) in addition to the costs already ordered by the High Court, shall pay to the Supreme Court Legal Services Authority, costs quantified at Rs. 50,000- within a period of four weeks of this order...."

64. The observations of the Apex Court in this behalf as back as in ***(1994) 4 SCC 225 (at page 246)*** ***Morgan Stanley Mutual Fund v. Kartick Das*** are also topical and instructive and were made with the intention of discouraging speculative and vexatious litigation and judicial adventurism. In this behalf, the court observed thus:

"47. There is an increasing tendency on the part of the litigants to indulge in speculative and vexatious litigation and adventurism which the fora seem readily to oblige. We think such a tendency should be curbed. Having regard to the frivolous nature of the complaint, we think it is a fit case for award of costs, more so, when the appellant has suffered heavily. Therefore, we award costs of Rs. 25,000/- in favor of the appellant. It shall be recovered from the first respondent C.A. No. 4584 of 1994 arising out of SLP (c) No. 272 of 1994 is allowed accordingly."

65. The Division Bench of this Court in ***2004 (110) DLT 186 entitled Indian Steel & Wire Products v. B.I.F.R. (DB)***, held that the sole purpose of filing the petition was to sabotage the proposal/scheme of TISCO which was accepted by the BIFR. The court held that the petitioner-company's false offer and undertaking has delayed the implementation of the scheme and the interest of workers and other creditors have suffered. The court held that the petitioner had not approached the court with clean hands and that such practice and tendency needed to be strongly discouraged and

effectively curbed so that "in future, the petitioner and such like litigants should not gather the courage of abusing the process of law for ulterior motives and extraneous considerations. Such motivated petitions pollute the entire legal and judicial process which seriously affects the credibility of this system".

66. In these circumstances, the court held that the respondent who had to appear before the court in pursuance of the notice issued had to "unnecessarily incur the costs to contest such a frivolous petition. In our considered opinion, at least those respondents who have appeared and contested this litigation and incurred costs must be compensated to some extent". The court consequently awarded costs to each of the respondents who appeared in the matter on consideration of the totality of the facts and circumstances and in the interest of justice and fair play.

67. Imposition of costs normally follows the indemnity principle which is simply described as "If you lose, you will be responsible not merely for your own legal costs but you must pay the other side's too".

68. In this background, there is yet another more imperative reason which necessitates imposition of costs. The resources of the court which includes precious judicial time are scarce and already badly stretched. Valuable court time which is required to be engaged in adjudication of serious judicial action, is expended on frivolous and vexatious litigation which is misconceived and is an abuse of the process of law. A judicial system has barely sufficient resources to afford justice without unreasonable delay to those having genuine grievances. Therefore, increasingly, the courts have held that such totally unjustified use of judicial time has to be curbed and the party so wasting precious judicial resources, must be required to compensate not only the adversary but also the judicial system. For this reason, in the ***State of Karnataka v. All India Manufactures Organisation (Supra)***, the appellants

were required to pay costs to the Supreme Court Legal Services Authority in addition to paying the costs to the adversarial party. Such vexatious litigation has to be deprecated. Lord Phillips MR in a judgment rendered in the court of appeal in ***(2004) 1 WLR 88 (CA) entitled Bhamjee v. Forsdick and Ors.*** said:

> "(8) In recent years the courts have become more conscious of the extent to which vexatious litigation represents a drain on the resources of the court itself, which of necessity are not infinite. There is a trace of this in the judgment of Staughton LJ in Attorney-General v. Jones (1990) 1 WLR 859, 865C, when he explained why there must come a time when it is right for a court to exercise its power to make a civil proceedings order against a vexatious litigant. He said that there were at least two reasons:
>
> "First, the opponents who are harassed by the worry and expense of vexatious litigation are entitled to protection; secondly the resources of the judicial system are barely sufficient to afford justice without unreasonable delay in those who do have genuine grievances and should not be squandered on those who do not."

69. The same concerns were articulated in ***Attorney-General v. Ebert (2004) EWHC 1838 (Admn.)*** thus:

> "Mr. Ebert's vexatious proceedings have...been very damaging to the public interest; quite aside from the oppression they have inflicted on his adversaries.... The real vice here, apart from the vexing of Mr. Ebert's opponents, is that scarce and valuable judicial resources have been extravagantly wasted on barren and misconceived litigation, to the detriment of other litigants with real cases to try." Silber J, concurring, referred (at para 61) to "a totally unjustified use of judicial time."

70. The Division Bench of this Court has further considered yet another impact of frivolous and vexatious litigation. In ***1995 (59) DLT 604 Jagmal Singh v. Delhi Transport Corporation***, the court was called upon to consider a challenge to the disciplinary proceedings at the hands of an employee of the Delhi Transport Corporation. While noticing the various reasons as to the self-imposed limitations on the courts in interfering with interlocutory stages of departmental proceedings, the court arrived at a finding that the writ petition by the petitioner was not only misconceived but an abuse of the process of the court. After so holding, the court observed thus:-

> "We are firmly of the view that petitioner has resorted to the dilatory tactics hereby crippling the progress of the departmental enquiry pending against him for the last about eight long years. It is not only unfortunate but matter of concern to all of us being the members of the society, that the petitioner by indulging in this type of frivolous litigation has not only wasted his time and money but has also wasted the time of the court and other public functionaries thereby causing unnecessary drain on the resources of public exchequer whose coffers are filled in by poor people's money. In such a case with a view to discourage frivolous litigation, it becomes our duty not only to see that the petitioner is saddled with exemplary costs but also to ensure that he gets no benefit on account of the delay caused by him in the departmental enquiry pending against him."

71. There have been several other instances when the courts have been called upon to consider such frivolous and sham claims. In the judgment dated 17th July, 2006 passed by this Court in Arb.Petition No. 22/2006 entitled ***M/s Ge Countrywide Consumer Financial***

Services Ltd. v. Shri Prabhakar Kishan Khandare and Anr., it was observed thus:

> "30. The matter however cannot rest here. It is apparent that the petitioner has caused the respondents to incur heavy expenses and to contest litigation in a city where they do not reside or work for gain. The petition was filed in the district courts wherein it was contested by the respondents and thereafter in the jurisdiction of this Court. Having regard to the entire conspectus and facts noticed above, in my view, punitive and exemplary costs deserve to be imposed on the petitioner for its conduct in effecting the interpolations in the agreement and placing reliance on the same before this Court as well as in compelling the respondents to contest litigation which it knew was not maintainable within the jurisdiction of this Court. The petitioner also deliberately and mala fide concealed a material facts while filing the present petition. The petitioner has deliberately wasted precious court time with impunity and without remorse. Therefore, whether dismissal or withdrawl, the petitioner cannot be permitted to get away without compensation to the respondents and the justice system. The matter has been listed before this Court on several dates and before the District Courts before that. Such conduct has not only to be condemned but it is necessary to impose such costs as would deter the petitioner and others like it from resorting to such tactics.
>
> Therefore, while dismissing the petition I hereby impose punitive and exemplary costs on the petitioner of Rs. 1,20,000/- The petitioner shall apportion the costs which have been awarded equally between the respondents, the Delhi High Court Lawyers' Social Security & Welfare Fund and the National Legal Aid Fund (NALSA). The

costs shall be deposited by the petitioner within four weeks. Proof of deposit of the costs shall be placed before this Court."

xxx xxx xxx

73. In ***2006 (32) PTC 133 (Del.) entitled Austin Nichols and Anr. v. Arvind Behl and Anr.***, a learned Single Judge of this Court has expressed the view that mere injunction does not subserve the interest of unsuccessful party and that the actual legal costs incurred by them for contesting the application would be awarded to the party that succeeds. The plaintiff had indicated that it had incurred costs of Rs. 18,85,000/-. In these circumstances, as the plaintiff succeeded in the application, it was held that it was entitled to costs which were quantified at Rs. 18,85,000/- even at the interlocutory stage."

126. Award of costs in favour of the opposite side alone is not enough. Valuable judicial time is caused to be expended on vexatious or frivolous or misconceived litigation. This time would have been better spent on adjudication of critical cases as well as cases of senior citizens or those needing urgent relief. Additionally there is a huge drain on the public exchequer as well which maintains the judicial services which includes not only the court room but includes a huge layout on administration and provision of related services ensuring access to justice, legal and alternate dispute redressal for a (arbitration, mediation and conciliation centres) on tax payers contribution. Some aspects of this case were noted by the court in the decision by one of us (Gita Mittal, J.) dated ***19th February, 2009*** in ***Co.Pet.No.368/2008*** in the matter of The Companies Act, 1956 and the petition under Sections 391 and

394 of the Companies Act, 1956 involving the Scheme of Amalgamation of : ***M/s Kusal Securities Pvt. Ltd. and M/s V.V. Securities Pvt. Ltd. with M/s Peethambra Excavators Pvt. Ltd.*** which read thus :-

> "24. As of today, it is ***not only the actual court room which is involved in the dispensation of justice***. Apart therefrom, there are other ***forums like Delhi High Court Legal Services Committee, Delhi High Court Mediation & Conciliation Centre and Delhi Legal Services Authority***, which are ***providing institutionalized alternate dispute redressal forums and legal aid to support the justice dispensation system***. There is no known method of compensating the judicial system for the valuable judicial time wasted. However, ***strengthening these other systems and provision of aids the system and facilitates expeditious resolution and adjudication of disputes***.
>
> 25. The liquidation proceedings are not only a prolonged and time consuming affair but extremely costly. It needs no hard figures and I would be justified in taking judicial notice of the fact that the state alone cannot be permitted to bear the unwarranted burden on the system. ***Certainly those seeking dispensation, more so out of turn, are required to contribute the costs thereof. In view of the scarcity of funds available to them, the institutions noticed hereinabove deserve to be financially strengthened by way of providing costs, as the same goes a long way in discharging judicial function.***"
>
> (Emphasis by us)

A direction to unscrupulous litigants pursuing legally worthless causes to deposit some amounts in these forums out of the costs which awarded would go towards mitigation of the

unwarranted drain of public resources on account of the frivolous litigation generated by unscrupulous parties. The same is certainly in the interests of justice.

127. We have found that the present appeal was wholly misconceived and without merit and that judicial time has been wasted unjustifiably with the intent to oppress the owners of the property for the malafide purpose of perpetuating wrongful occupation.

128. The suit property is a valuable piece of property. Judicial notice can be taken of circle rates of the land which are publicly notified by the Municipal Corporation of Delhi ('MCD' for brevity). So far as Sangam Vihar in South Delhi is concerned, the same falls in the category 'G' area in the South Zone of the MCD. In November, 2012, the MCD Delhi circle rates for Category 'G' property were @ ₹38,442/- per sq. mtr. In September, 2014, the MCD notified the circle rate of Category 'G' @ ₹46,200/- per sq. mtr. Therefore, in Sangam Vihar (Category 'G'), a plot of 200 sq. yds. in November, 2012 if calculated at such value would come to ₹76,88,400/- (₹38,442/- x 200). The same plot in September, 2014 would be valued at ₹92,40,000/- (₹46,200/- x 200). Much does not need to be said on the fact that these are conservative estimates. The market rate of a built up property of eight rooms with other facilities in the South Delhi colony would be much more.

129. The appellants have been represented by competent legal counsels and have shown that they are persons of means capable of contesting five and more cases in the courts in Delhi which

includes one suit before the Civil Judge, the appeal before the ADJ, suit and appeal before the Single Judge as well as the present appeal before the Division Bench.

130. We have noted above that the appellants are occupying property of the respondents bearing Plot No.323/1-A, Block-D (Old No.229/1-A), Sangam Vihar, New Delhi 110062, as claimed, for over 15 years without paying a penny. However, in the electoral rolls, the appellants are shown to be residents of House No.D/2/39, Gali No.2, Block – D, Sangam Vihar, New Delhi, another valuable property in South Delhi. The litigation thus stems out of pure greed of the appellants unrelated to any genuine causes or entitlements. There can be no manner of doubt with the capacity of the appellants to pay the costs of litigation as may be imposed.

131. Protracted arguments spreading over many days have been addressed before us. We have also been taken over the record of the present appeal as well as CS(OS) No.3275/2012. The appellants must, therefore, be required to compensate the other side by reasonable costs which they would have incurred in the litigation and also to afford some measure of compensation to the judicial system. The appellants have got away without payment of costs in the other cases.

132. On a consideration of totality of circumstances, the appellants deserve to be burdened with costs of at least ₹5,00,000/-. However, inasmuch as courts are so far generally not imposing such quantum of costs (which must be encouraging unscrupulous litigants as these appellants to indulge in judicial adventurism and

filing cases), we restrict our order on costs of the present appeal to ₹1,25,000/- to be apportioned between respondents and Delhi High Court Legal Services Committee.

Result

133. In view of the above discussion, the appeal is dismissed being completely devoid of legal merit with costs which are quantified at ₹1,25,000/-. The costs shall be apportioned between the respondents and the Delhi High Court Legal Services Committee.

The appellants shall pay to the respondents an amount of ₹1,00,000/- towards the costs while an amount of ₹25,000/- shall be deposited with the Delhi High Court Legal Services Committee within a period of four weeks from today.

It is ordered accordingly.

(GITA MITTAL)
JUDGE

MARCH 20, 2015 **(SUNIL GAUR)**
mk/aj/kr **JUDGE**