

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

% **Pronounced on: 17<sup>th</sup> December, 2021**

+ CS(OS) 230/2020, I.As. 7755/2020 (by the plaintiffs under Section 151 CPC for necessary directions), 11545/2020 (by the plaintiffs under Order XII Rule 6 read with Section 151 CPC seeking judgment against defendants), 8712/2021 (by the plaintiffs under Order VII Rule 14 read with Section 151 CPC) & 14089/2021 (by the defendant No.1 under Order VIII Rule 1A read with Section 151 CPC for placing on record additional documents in support of the written statement)

MONIKA TYAGI & ORS. .... Plaintiffs  
Through: Mr. Ravi Gupta, Senior Advocate  
with Mr. Vidit Gupta, Mr. Sachin  
Jain and Mr. Himansh Yadav  
Advocates

versus

SUBHASH TYAGI @ MOOLRAJ TYAGI & ORS..... Defendants  
Through: Mr. Rajat Aneja and Ms. Rajula,  
Advocates

**CORAM:**  
**HON'BLE MS. JUSTICE ASHA MENON**

### **J U D G M E N T**

**I.As.11545/2020 (by the plaintiffs under Order XII Rule 6 read with Section 151 CPC seeking judgment against defendants) & 8712/2021 (by the plaintiffs under Order VII Rule 14 read with Section 151 CPC)**

1. This order will dispose of the application (I.A.11545/2020) filed by the plaintiffs under Order XII Rule 6 CPC seeking judgment on

admissions against the defendants. The application (I.A. 8712/2021) for filing additional documents shall also be disposed of by this order.

2. The facts of the case as setup in the plaint may be briefly stated for the sake of ready reference. The plaintiffs have filed the suit seeking recovery of possession, mesne profits, permanent and mandatory injunction against the defendants, their agents, servants or any other person claiming through them in respect of property being land measuring 2200 sq. yards forming part of Khasra No.47/25/1/2 (0- 2), 47/25/2/1 (1-18) and 54/1/2 (0-4) in Khata No. 281 situated in the revenue estate of village Hastal, Delhi. The property is stated to be situated in the Pradhan Wali Gali and bounded by 20 feet high brick walls on all sides. It is stated to have a built up portion comprising of two halls, three rooms, two separate bathrooms, two separate kitchens, a temple and a garden and a covered parking space (hereinafter referred to as the “**suit property**”).

3. The plaintiff has stated that there are two entrances to the said property, being No.370 at the entrance from the Pradhan Wali Gali and No.371-A from the side of the MCD Primary School, village Hastal. The property belonging to the defendants surrounds the suit property on the North, South and the East directions and by the Pradhan Wali Gali in the West direction. Of the two gates, one opens towards the western side and the other towards the northern side.

4. The defendants are the relatives of the plaintiffs. The plaintiffs state that the suit property was originally owned by late Sudhir Kumar Tyagi, who expired on 24<sup>th</sup> May, 2018. It is claimed that the suit property had come into the share of Sudhir Kumar Tyagi on the basis of a partition

which took place vide a decree dated 23<sup>rd</sup> May, 1994 passed by the Revenue Assistant, Delhi in a suit being preferred under Section 55 of the Delhi Land Reforms Act, 1954 and the partition has also been entered in the revenue records. It is stated that though initially at the time of partitioning of the ancestral property, the relationship of Sudhir Kumar Tyagi and the defendant No.1 had turned sour but with the passage of time, the relations had become stable so much so that in the year 2013, at the time of the wedding of the plaintiff No.1, both families had started visiting each other. Thus, when in the year 2016, the defendants requested Sudhir Kumar Tyagi to allow them to open a gym in the hall of the suit property, he agreed. The defendants at times have paid some amount around Rs.20,000/- or Rs.25,000/- but there was no regular payment. Thus, the defendants are in possession of the suit property only as the licensee of late Sudhir Kumar Tyagi and now the plaintiffs.

5. The further case set out in the plaint is that the plaintiffs had asked the defendants to vacate the suit property but the defendants refused to vacate the same. The plaintiffs have also claimed that despite the occupation of the suit property by defendants, Sudhir Kumar Tyagi had retained in his possession an office/room, latrine, kitchen and a storage room near the northern side of the suit property towards the MCD Primary School which he used for his personal purposes and which was placed under his lock and key and contained his old business records. The covered parking area was also being used by the plaintiffs and their visitors. However, by the end of 2017, the relationship again deteriorated. Thereafter, Sudhir Kumar Tyagi expired on 24<sup>th</sup> May, 2018. It was averred that the plaintiffs taking hold of the situation, in 2019 made a

joint request to the defendants to vacate the suit property but they requested for more time as their own residence was under renovation. A promise was made by the defendants that they would vacate the suit property by February or March, 2020 but till date they had failed to do so taking advantage of the Covid-19 pandemic situation.

6. In these circumstances, the suit has been filed with the following prayers:

*“i. To pass a decree for recovery of possession in favour of Plaintiffs and against the Defendants, their agents, servants or any other person claiming under them directing him them to evict the suit property being land ad-measuring 2200 Sq. Yds. forming part of Khasra No.47/25/1/2 (0-2), 47/25/2/1 (1 - 18) and 54/1/2 (:::l-4) in Khata No. 281 situated in the revenue estate of village Hastal, Delhi being land under Lai-Dora, being bounded by brick walls with an approx. height of 20 feet on all sides having a built-up portion consisting of 2 halls, 3 rooms, 2 separate bathrooms, 2 separate kitchens, a temple along with garden and a covered parking space of approximately 100 sq. yds. having 2 entrances being numbered as Property No. 370 from the entrance at Pradhan Wali Gali and 371-A from the other side near the MCD Primary School, Village Hastal, Delhi, being bounded and surrounded by the land of the Defendants in North, South and East directions and by Pradhan Wali Gali in the West direction where two entrances were devised, one on the western side on the Pradhan Wali Gali and other on the northern side towards the MCD Primary School, Village Hastal, Delhi (better shown in Red color in the accompanying Site Plan);*

ii. To award the damages charges for the use and occupation mesne profits of the suit property being land ad-measuring 2200 Sq. Yds. forming part of Khasra No. 472512 (0-2), 472521 (1-18) and 5412 (0-4) in Khata No. 281 situated in the revenue estate of village Hastal, Delhi being land under Laai-Dora, being bounded by brick walls with an approx .. height of 20 feet on all sides having a built-up portion consisting of 2 halls, 3 rooms, 2 separate bathrooms, 2 separate kitchens, a temple along with garden and a covered parking space of approximately 100 sq. yds. having 2 entrances being numbered as Property No. 370 from the entrance at Pradhan Wali Gali and 371-A from the other side near the MCD Primary School, Village Hastal, Delhi, being bounded and surrounded by the land of the Defendants in North, South and East directions and by Pradhan Wali Gali in the West direction where two entrances were devised, one on the western side on the Pradhan Wali Gali and other on the northern side towards the MCD Primary School, Village Hastal, Delhi (better shown in Red color in the accompanying Site Plan) with effect from 20.08.2020 at the rate of Rs. 1,50,000- p.m. or as may be deemed appropriate by this Hon'ble Court, together with 15% annual increase as per market prevailing rentals damages charges for use and occupation for similar properties situated in the vicinity of the suit property.

iii. To pass a decree of permanent injunction in favour of the Plaintiffs and against the Defendants to restrain the Defendants from raising any construction over the suit property being land ad-measuring 2200 Sq. Yds. forming part of Khasra No. 47252 (0-2), 472521 (1-18) and 54/1/2 (0-4) in Khata No. 281 situated in the revenue estate of village Hastal, Delhi being land under Laal-Dora, being

*bounded by brick walls with an approx . height of 20 feet on all sides having a built-up portion consisting of 2 halls, 3 rooms, 2 separate bathrooms, 2 separate kitchens, a temple along with garden and a covered parking space of approximately 100 sq. yds. having 2 entrances being numbered as Property No. 370 from the entrance at Pradhan Wali Gali and 371-A from the other side near the MCD Primary School, Village Hastal, Delhi, being bounded and surrounded by the land of the Defendants in North, South and East directions and by Pradhan Wali Gali in the West direction where two entrances were devised, one on the western side on the Pradhan Wali Gali and other on the northern side towards the MCD Primary School, Village Hastal, Delhi (better shown in Red color in the accompanying Site Plan);*

*iv. To pass a decree of mandatory and permanent injunction in favour of the Plaintiffs and against the Defendants directing the Defendants to re-erect the wall removed by them, restore the water tanks to the original position and lock the door & handover the keys of said locks as per original and return the duplicate keys with immediate effect at Mark 'C' to its original position and prohibit/restrain Defendants, their agents servants or any other person claiming under them directing him them to use;*

*v. To award the costs of the suit in favour of the Plaintiffs; and against the Defendants as per law vi. To pass any other further order or orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the Plaintiffs against the Defendants.”*

7. In the application under Order XII Rule 6 CPC, it is submitted that the written statement filed on behalf of the defendants revealed no

worthwhile defence except to claim that they have become the owners of the suit property by way of adverse possession. Mr. Ravi Gupta, learned senior counsel for the applicants/plaintiffs has submitted that the essential ingredients for asserting title through adverse possession have not been even pleaded. Relying on the judgment of the Supreme Court in ***Karnataka Board of Wakf vs. Govt. of India & Ors.*** (2004) 10 SCC 779, it was submitted that no date has been given by the defendant nor the manner in which they had come into possession of the suit property has been disclosed. There is no averment that the defendants were claiming ownership rights in the suit property and there was no assertion to the world at large of their ownership and of the absence of any objections raised by the plaintiffs or their predecessor-in-interest. Learned senior counsel submitted that admittedly, the electricity bills and water bills still stand in the name of the predecessor-in-interest of the plaintiffs.

8. Relying on the judgment of the Supreme Court in ***Ravinder Kaur Grewal v. Manjit Kaur***, (2019) 8 SCC 729, it was submitted that long possession alone would not suffice to establish adverse possession. Moreover, if the initial entry into the property was legal then that would not get converted into an adverse possession by efflux of time. It was also submitted by the learned senior counsel that even if the worst case scenario as pleaded by the defendants was to be accepted, it is clear that mere abandonment of the suit property by the plaintiffs or the predecessor-in-interest would not establish acquiescence on the basis of which the defendants could claim title by adverse possession. In these circumstances, the learned senior counsel has prayed that decree of

possession be passed in favour of the plaintiffs and against the defendants.

9. Learned senior counsel for the plaintiff has placed reliance on the decision of the Division Bench of this court in *P.P.A. Impex Pvt. Ltd. v. Mangal Sain Metal*, 2009 SCC OnLine Del 3866 to contend that the standard available to the court to determine whether the plaint has disclosed a cause of action would be available to the court to determine whether the defence raised by the defendants was only moonshine and to submit that the defence raised in the present case was only moonshine. Reliance has also been placed on the judgments on behalf of the plaintiffs.

10. On the other hand, in the reply filed by the defendants it has been submitted that the application was liable to be dismissed as the plaintiffs have misled the stand of the defendant. It is submitted that the defendants have never admitted to the long foregone ownership and title of the suit property. Mr. Rajat Aneja, learned counsel on behalf of the defendants submitted that the suit property was not having any construction when the same had been taken by the defendant No.1, from the predecessor-in-interest of the plaintiffs. The suit property was bound on three sides by the property of the defendant No.1 who was running a gym from his property that was adjacent to the suit property and had taken the suit property from the late Sudhir Kumar Tyagi for expanding his gym. Over a period of time of 16 years, the defendant No.1 had carried out construction at the suit property with no interference from late Sudhir Kumar Tyagi.

11. The very fact that in March 2004, the defendant No.1 had broken the partition wall which demarcated the land belonging to each branch of the family and had begun construction over the entire plot of land, which included a hall, a room, a bathroom and a kitchen and had carried out further construction in October, 2007, June 2011, September 2013 and finally in April, 2016, was sufficient assertion of their rights by the defendants to both, the true owners as well as to the public at large with no intervention from the side of the plaintiffs or the predecessor-in-interest. Thus, the claim of the defendants to title on the basis of adverse possession entitled them to protection from eviction. It was further submitted that the defendants had clearly made out a case for adverse possession. There were no admissions on the basis of which any decree could be granted to the plaintiffs. The relief under Order XII Rule 6 CPC was discretionary and required clear, unambiguous and unconditional admissions which were lacking in the present case.

12. Learned counsel for the defendants further submitted that the very identity of the property being claimed by the plaintiffs was clouded since there was no property numbered 371-A, rather the property No.370 belonged to the defendants and since there was an entrance from the Pradhan Wali Gali, there was no property bearing the No.371-A. Learned counsel submitted that in the written statement, it has been specifically denied that the suit property bears the No.370 or 371-A. It was submitted that the property of the defendants adjacent to the suit property bears the municipal No.371 whereas property No. 370 was 200 meters away.

13. Learned counsel has also drawn the attention of this Court to the various bills placed on record by the plaintiffs as additional documents, to

submit that the bills related to some other property as reflected in the details of the address of the person being billed. As such, none of documents pertained to the suit property. It was further explained that the electricity and water bills in respect of the suit property stand in the name of late Sudhir Kumar Tyagi as he was the original owner and no efforts had been made to change the name, and the continuation of his name in the bills would be of no consequence to rebut the claim of the defendants to assert title in the suit property.

14. It was submitted that the suit property has been developed as a Sports Complex, as an expansion of the “Raghubir Singh’s Sports Complex” established by the defendant No.1 in 2003. Learned counsel further submitted that the plea of abandonment and acquiescence raised in the written statement by no means demolished the stand of the defendants that they had matured their title to the suit property through adverse possession. Hence, it was prayed that the application be dismissed.

15. Learned counsel for the defendants has relied on the judgment of the Supreme Court in *Himani Alloys Ltd. v. Tata Steel Ltd*, (2011) 15 SCC 273 to submit that the powers under Order XII Rule 6 CPC are discretionary even when there are unequivocal admissions. However, in the present case, there were no admissions, leave alone a categorical and unequivocal one. Thus, there was no occasion for the exercise of the discretionary powers vested in the court in favour of the plaintiff.

16. Further reliance has been placed on the judgment of the Division Bench of this court in *Indu Singh v. Surender Kamboj*, 2020 SCC OnLine Del 1415 to submit that the defendant must be accorded an opportunity to establish his defence as ordinarily disputed questions of

facts and other legal issues needed trial. In the present case when the defendant No.1 has submitted that when on five occasions since 2004, he had carried out construction in the suit property without any intervention or objection from the predecessor-in-title of the plaintiffs, the case required trial.

17. Much reliance has been placed on the judgment of the Supreme Court in *Ravinder Kaur Grewal (supra)* by the learned counsel for the defendants to submit that the Supreme Court has recognized acquisition of title by adverse possession to be used not only as a shield but also as a sword and that the defendant could assert rights against the true owner once he had perfected his title on the lapse of 12 years. In the present case, once the defendants have been able to show that they had come into possession and had asserted rights that were contrary to the rights of the true owner i.e., the predecessor-in-interest of the plaintiffs, the defendants could not be evicted. Thus, in the light of the averments made, there was no occasion to allow the application under Order XII Rule 6 CPC and award a decree of possession to the plaintiff.

18. In respect of the cases cited by the learned senior counsel for the plaintiffs, it was submitted that the facts in those cases were different and therefore were inapplicable to the facts of the instant case. It was submitted that in those cases, the question was in relation to an application under Order VII Rule 11 CPC and those parameters could not be applied to the present case which was relating to an application under Order XII Rule 6 CPC. As regards the case of *Uttam Chand v. Nathu Ram*, (2020) 11 SCC 263, it was submitted that unlike in the present case, in that case, the title of the true owner was not admitted whereas the case

set up by the defendants here was that the true owner had not asserted his rights in respect of the suit property even when the defendant No.1 had carried out construction on five occasions, thus, indicating that he had abandoned his rights. Similarly, the case of *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370 was also not applicable as in that case, no case of adverse possession had been set up. In short, the learned counsel submitted that this was a case in which a decree for possession can be rendered only on evidence and thus, the application under Order XII Rule 6 CPC be dismissed.

19. Before proceeding further, the application for additional documents is taken up. Since the matter is at a preliminary stage and learned senior counsel for the plaintiffs seeks to file these documents in an effort to meet the contention of the defendants that the suit property had been abandoned by the plaintiffs and further, since in the reply of the defendants, the objections raised do not appear to be more than formal, the application is allowed and the documents are taken on record.

20. The first question that must be dealt with is with regard to the identity of the suit property. Whereas the plaintiffs have stated that there are two entrances to the suit property, one from the side of the Pradhan Wali Gali and the other from the side of the MCD Primary School and therefore two numbers have been given by the plaintiffs i.e., No.370 and 371-A, this has been disputed by the defendants who claim that the number is 371, which is the number of their own property. As rightly pointed out by the learned counsel for the defendants, the documents that have been sought to be placed on the record refer to several addresses and, therefore, *prima facie* do not assist the plaintiffs in establishing that

the property is either 370 or 371-A or not 371 as claimed by the defendants. But despite that, there does not appear to be any doubt as to the identity of the property in respect of which the plaintiffs have claimed possession from the defendants and in respect of which the defendants have asserted title by adverse possession.

21. There is no difference between the site plans filed by both sides. The Khasra numbers have been mentioned, and the boundaries have also been delineated in the plaint by the plaintiffs as well as by the defendants. Further, it is an admitted case that the property No.371 is the property of the defendant No.1 and the suit property is surrounded by the properties of the defendants. It is also to be noted that the defendants have in their written statement claimed that they had broken the boundary walls to get access to the suit property but the said walls were actually constructed by the defendants. Since, initially there would have been no intention to amalgamate both the properties, as that has not been claimed by the defendant No.1, 371-A being the number allotted to the suit property, can be accepted. In these circumstances, the raising of a doubt on the number of the suit property is insufficient to deny a consideration of the application under Order XII Rule 6 CPC on merits.

22. There is another aspect that needs to be noted before proceeding further and that is with regard to the admission that the electricity and water meters still stand in the name of the predecessor-in-interest of the plaintiffs. The explanation offered on behalf of the plaintiffs was that they had not changed the name with the utilities but that it did not mean anything. However, when in the written statement, the defendants have stated that the plaintiffs' predecessor-in-interest used to pay the electricity

and water bills and that the defendants would reimburse the same, it is a clear admission that the predecessor-in-interest had rights in the suit property which he continued to assert till his death. In any case, the defendants have not been able to file on record any electricity bill that was raised in their names at the suit property for running their Sports Complex.

23. While considering an application under Order XII Rule 6 CPC, no doubt, the law is that the powers are discretionary and further, that for the Court to exercise its powers under the said provisions, admissions should be clear, unambiguous and unequivocal. However, a Coordinate Bench of this court in *Rajeev Tandon v. Rashmi Tandon*, 2019 SCC OnLine Del 7336 had considered the pleas of the defendant raised in that case to find out whether it disclosed any meaningful defence or not. The absence of material particulars in the pleadings and presence of unsubstantiated pleas and vague averments were found sufficient to hold that there are admissions in the pleadings to pass a decree under Order XII Rule 6. To reach such a conclusion, reliance had been placed on the decisions of the Division Bench of this court in *Vijaya Myne v. Satya Bhushan Kaura*, 2007 SCC OnLine Del 828, *Delhi Jal Board v. Surendra P. Malik*, 2003 SCC OnLine Del 292 and *Sagar Gambhir v. Sukhdev Singh Gambhir*, 2017 SCC OnLine Del 7305.

24. The Division Bench of this court in *P.P.A. Impex Pvt. Ltd.(supra)* after reference to *T. Arivandandam v. T.V. Satyapal* (1977) 4 SCC 467 observed as below:

“9. It appears to us that the approach to be taken under Order XII Rule 6 is akin to what has been enunciated by the

Supreme Court in Mechalac Engineers & Manufacturers v. Basic Equipment Corporation, (1976) 4 SCC 687, in the context of Order 37 of the CPC with regard to granting leave to defend a summary suit. This is that if a defence amounting to moonshine has been presented, it should be summarily dismissed by not granting leave to defend and by decreeing the suit forthwith. The Courts are already groaning under the weight of bludgeoning and exponentially increasing litigation. The weight will unvaryingly increase if moonshine defences are needlessly permitted to go to trial.” **(emphasis added)**

It further went on to hold that if pleadings that were vague and were in the nature of total moonshine were taken note of, the provision of Order XII Rule 6 would be virtually annihilated.

25. Thus, while disposing of an application under Order XII Rule 6 CPC, the court is fully justified in considering the averments in the written statement to see whether essential facts have been pleaded or whether the defence is a complete moonshine, requiring the Court to not send the case for trial.

26. With regard to what are the necessary pleadings in a case where title through adverse possession is claimed, either as a shield or as a sword, the Supreme Court in **Karnataka Board of Wakf (supra)** has held that a person who claims adverse possession should show: (a) on what date he had come into possession; (b) what was the nature of his possession; (c) whether the factum of the possession was known to the other party; (d) how long his possession has continued and (e) his possession was open and undisturbed. 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. This possession which is adequate in continuity, in publicity, and in extent must be to show that the possession is adverse to the true owner. It must start with wrongful dispossession of the rightful owner and the actual physical and hostile continued possession over a statutory period.

27. No doubt the defendants have accepted the fact that this suit property had fallen in the share of late Sudhir Kumar Tyagi, the plaintiffs’ predecessor-in-interest, on partition of the suit property and he had been its owner since then. However, one fact that stands out is that in 2004, the defendants admit that defendant No.1 requested late Sudhir Kumar Tyagi to allow them to use the plot which was adjacent to their Sports Complex. In view of the fact that the parties were on good terms, as per the averments in the written statement, late Sudhir Kumar Tyagi had permitted the defendant No.1 to use the plot. Thus, the possession has not been a result of wrongful dispossession of the rightful owner, when the defendant No.1 came into the premises.

28. It is trite that long possession will not affect the title of the true owner. Nor would the lack of use of the property by the owner, for a long time, affect his title. It is only when the defendants start asserting hostile title that the clock will start ticking. Strangely, in the entire written statement, the defendants have not stated with any definiteness as to the dates since when they had started asserting their hostile title. That alone would disclose a valid defence to the suit by asserting title by adverse possession. The mere fact that the boundary walls had been built by the defendants cannot be termed as a hostile act against the true owner as the walls had been constructed to define the properties of the defendants after

the family partition took place. Nor for that matter, would the construction activities at the site be inferred as an assertion of hostility by the defendant No.1, as nowhere it is stated that he had done so without the permission of the true owner late Sudhir Kumar Tyagi and in fact claimed title during his life time.

29. In fact, there is no disclosure in this regard, except a bald assertion. But when the written statement is seen in totality, the fact that the parties were in a cordial relationship and the defendant No.1 himself claims that the water and electricity meters continue to stand in the name of late Sudhir Kumar Tyagi and that he used to reimburse him when payments were made, would show that the defendant No.1 did not assert independent and hostile title to late Sudhir Kumar Tyagi. It is in this background that a date had to be disclosed when assertion of hostile possession was first made, since limitation would then be counted from that date. An essential ingredient has thus not been pleaded.

30. The defendants had to specifically plead with sufficient clarity when the possession became adverse and the exact date when adverse possession commenced and whether this fact was let known to the real owner. Their only reliance is on construction activities but that fact alone does not establish hostile title, as the initial possession was permissive. It was deemed to have continued till the plaintiffs revoked that permission to the defendants to remain in the suit property. It is only when the required animus to hold the property in a manner hostile to the true owner that it would be possible to determine how many years have passed since such open and hostile possession continued. Without commencement, there cannot be continuation. In the present case, a fundamental plea to

submit the claim of adverse possession is missing and the burden on the defendants has not been discharged.

31. The judgment of the Supreme Court in *Ravinder Kaur Grewal (supra)* relied upon by the learned counsel for the defendants itself observes in Para No.46 that the limitation of 12 years runs from the date when the possession of the defendants becomes adverse to the plaintiffs and that this must be asserted by the one who is claiming title by virtue of adverse possession. The Supreme Court has referred to various judgments and exhaustively discussed them to take such a view. It has been also reiterated that long possession is not synonymous with adverse possession. In the present case, the entry itself has been permissive and it would be incumbent on the defendants to plead at what point of time this permissive possession had turned hostile.

32. Thus, it is the defendant who had to plead and only when pleadings exist can he prove the three classic requirements of “*nec vi, nec clam, nec precario*”. The non disclosure of the starting point of limitation against the plaintiffs being not pleaded clearly, the defence of adverse possession is “total moonshine”. Following the dicta of the Division Bench of this Court in *P.P.A. Impex Pvt. Ltd.(supra)*, the moonshine defence need not be sent for trial.

33. In the light of the foregoing discussions, the application under Order XII Rule 6 CPC is allowed. The suit be decreed in favour of the plaintiff and against the defendants with respect to the possession of the suit property. The defendants are granted four months’ time to vacate the suit premises.

34. The decree sheet be prepared accordingly.

**CS(OS) 230/2020, I.As. 7755/2020 (by the plaintiffs under Section 151 CPC for necessary directions) &14089/2021 (by the defendant No.1 under Order VIII Rule 1A read with Section 151 CPC for placing on record additional documents in support of the written statement)**

35. For the remaining reliefs claimed in the plaint, list for framing of issues on 10<sup>th</sup> May, 2022.

36. The judgment be uploaded on the website forthwith.

**(ASHA MENON)  
JUDGE**

**DECEMBER 17, 2021**

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