

**S.C. Aggarwal Vs. B.K. Goel and Another**

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**Court :** Delhi

**Decided On :** Jul-19-2016

**Judge :** The Honourable Ms. Justice Hima Kohli

**Appeal No. :** CS(OS) No. 160 of 2014

**Appellant :** S.C. Aggarwal

**Respondent :** B.K. Goel and Another

**Judgement :**

IA No.4726/2016 (by plaintiff under Order 12 Rule 6 CPC)

1. The present application has been filed by the plaintiff in a suit for partition in respect of an immovable property bearing Shop No.53, Mehar Chand Market, Lodhi Road, New Delhi, praying inter alia that a decree for partition may be passed on the basis of the admissions made by the defendants in the written statement.

2. As per the averments made in the plaint, the plaintiff and the defendant no.1 are the joint allottees of the subject shop, taken on leasehold basis from the Land and Building Department, Ministry of Urban Development, Government of India, vide allotment letter dated 15.01.1997. After the allotment was made in their joint names, the plaintiff and the defendant No.1 had executed a hire purchase agreement with the Government of India and continued depositing the requisite dues from time to time. Both the parties had joint possession of the shop and shared the common keys for the entry from the front and the back of the shop. In

the year 2001, the defendant had started running a STD/ISD phone booth and photocopy business from a portion of the suit premises. The plaintiff was also running his business from a part of the shop and both the parties had remained in joint occupation of the suit premises.

3. It has been averred in para 8 of the plaint that in the year 2005, the Land and Development Office had called upon the plaintiff and the defendant No.1 to submit requisite documents for execution of a lease/conveyance deed in respect of the subject shop and the plaintiff had approached the defendant No.1 for preparing the relevant documents. It was then that the defendant No.1 had informed the plaintiff that he has appointed defendant No.2 as his attorney and she would execute and sign the documents on his behalf.

4. Accordingly, the plaintiff and the defendant No.2 as the attorney of the defendant No.1 had executed and signed the requisite documents and submitted them to the Land DO. However, vide letter dated 08.08.2005, the Land DO rejected the said application on the ground that the attorney executed by the defendant No. 1 in favour of the defendant No.2 was an unregistered document. Thereafter, the plaintiff claims that he had approached the defendant No.1 on several occasions for completion of all formalities for execution of a lease deed/conveyance deed in respect of the subject shop, but he avoided doing so, thus compelling him to institute a suit for permanent mandatory injunction against the defendant No.1, defendant No.2 and her husband which is pending before the Civil Judge, Tis Hazari Courts. It is contended that as a counter blast to the said suit, the defendant No.2 as the power of attorney-holder of the defendant No.1 had filed a suit for mandatory injunction against the plaintiff No.1 in respect of the subject shop which is pending adjudication before the Civil Judge, Saket Courts, New Delhi.

5. Though there is no specific averment made in the plaint, learned counsel for the plaintiff states that after instituting the present suit, the plaintiff has withdrawn the suit instituted by him against the defendants in the trial court. Originally, the plaintiff had impleaded the defendant No.1 as the sole defendant in the present proceedings. Service of the summons in the suit was effected on the said

defendant on 12.08.2014. An advocate had also appeared for the said defendant but no written statement was filed. As a result, vide order dated 09.04.2015, the right of the defendant No.1 to file written statement was closed. Subsequently, defendant No.2 had filed an application for impleadment in the present proceedings which was allowed vide order dated 11.09.2015. Thereafter, a written statement was filed by the defendant No.2. For the sake of completing the sequence of events, it may be noted that the plaintiff had expired on 17.4.2014 and vide order dated 12.8.2014, his legal heirs were permitted to be brought on record.

6. Learned counsel for the plaintiffs submits that the plaintiffs are entitled to a judgment on admissions because the defendant No.2 has made clear and categorical admissions in the written statement to the effect that the deceased plaintiff and the defendant No.1 are the joint allottees of the subject shop. To substantiate the said submission, he refers to the averments made by the defendant in reply to para 1, para 2, para 3 and para 20 of the written statement.

7. Apart from the admissions stated to have been made by the defendant No.2 in the written statement, learned counsel for the plaintiff also draws the attention of this Court to the documents filed by the defendant No.2 under index dated 3<sup>rd</sup> July 2015, which includes a copy of the Agreement to Sell, possession letter, General power of attorney, all dated 6<sup>th</sup> July 2001 and a will dated 2<sup>nd</sup> July 2001 executed by the defendant No.1 in favour of the defendant No.2. He states that the Agreement to Sell states in so many words that the defendant No.1 is the absolute owner in possession of one half share of the subject shop and goes on to record that the defendant No.2 is authorized to take possession of the remaining half share from the plaintiff.

8. Learned counsel for the plaintiff submits that without going into the aspect of the actual status of physical possession of the shop in question which has been disputed by the defendant No.2 whose stand it is that she is in occupation of 25% area of the subject shop which falls in the front portion whereas the plaintiffs are in possession of 75% of the shop which has its entrance from the back, the present application is liable to be allowed as there is no challenge to the fact that the

subject shop is jointly owned by the deceased plaintiff and the defendant No.1. He submits that in view of the admissions made by the defendant No.2 to the effect that the subject shop stands jointly recorded in the names of the plaintiff and defendant No.1 in the records of the Land DO and the defendant No.2 as the power of attorney holder/successor-in-title of the defendant No.1 cannot claim a better title than him, a preliminary decree may be passed, in terms of prayer clause (a) of the plaint.

9. Mr.Safaya, learned counsel for the defendant No.2 states that there is no dispute about the fact that the plaintiff and the defendant No.1 are the joint allottees of the subject shop. He however submits that the defendant No.2 and the plaintiff had later on arrived at a mutual agreement whereunder, it was agreed that the plaintiff would remain in possession of 75% of the shop that opens from the back side whereas the defendant No.2 who is running the business of a PCO booth and photocopying would occupy the remaining 25% of the shop with the entrance from the front side. He states that in view of the said settlement arrived at between the plaintiff and the defendant No.2, as to the manner in which they would occupy the subject shop by way of mutual consent and acquiescence, the plaintiffs cannot insist that they be handed over 50% possession of the shop premises.

10. The Court has considered the rival submissions of the parties and carefully perused the pleadings and the relevant records.

11. The courts are empowered to exercise the powers under Order XII Rule 6 CPC to enable a party to obtain a speedy judgment at least in respect of the admissions made by the defendant, the object being to cut short unnecessary delays and bring a litigation to an end. The second object of the said provision is to ensure that a party does not abuse the judicial process and a person entitled to relief, is not made to go through the travails of trial.

12. While deciding an application under Order XII Rule 6 CPC, the court is expected to confine itself to examining the pleadings/documents referred to by the applicant, as admissions made by the other side. In the case of Charanjit Lal Mehra vs. Smt. Kamal Saroj Mahajan, reported as (2005) 11 SCC 279, the

Supreme Court has held that an admission under Order XII Rule 6 CPC can even be inferred from the facts and circumstances of the case and since Order XII Rule 6 CPC has been enacted to expedite trial, where the courts find that the suit can be disposed of on such admissions, it should not hesitate from doing so.

13. For understanding as to what are the nature of admissions, which can be considered as admissible under the aforesaid provisions, one may profitably refer to the following observations made by the Supreme Court in the case of Uttam Singh Duggal and Company Ltd. vs. United Bank of India reported as (2000) 7 SCC 120 :-

17. ...Learned counsel for the Petitioner contended that admissions referred to in Order XII, Rule 6 CPC should be of the same nature as other admissions referred to in other rule preceding this Rule. Admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872. Admissions are of many kinds : they may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly as between parties by agreement or notice. Since we have considered that admission for passing the judgment is based on pleadings itself it is unnecessary to examine as to what kinds of admissions are covered by Order XII, Rule 6 CPC... (emphasis added)

14. It is also relevant to refer to the observations of a Division Bench of this Court in the case of Vijaya Myne vs. Satya Bhushan Kaura, reported as 142 (2007) DLT 483, where in the light of the innumerable authorities on Order XII Rule 6 CPC, it was held that admissions can be constructive admissions and need not be specific or expressive, which can be inferred from vague and evasive denial in the written statement while answering specific pleas in the plaint and further, that admissions can even be inferred from the facts and circumstances of a case.

15. For the purposes of deciding the present application, this Court proposes to confine itself to examining if the relief of passing a preliminary decree of partition in respect of the subject shop can be granted on the basis of the admissions allegedly made by the defendant No.2 in the written statement and the documents

filed by her on record.

16. The relevant extracts of Para 1-2, Para 3 and Para 20 of the written statement of the defendant No.2 referred to and relied upon by the plaintiff, are reproduced herein below for ready reference:-

1-2 Para 1 and 2 of the Plaintiff are a matter of record. However, it is submitted that the Original allotment was in the name of Shri Krishan Singh and thereafter the same was allotted in the name of Plaintiff and Defendant No.1. The Defendant No.1 transferred its rights and possession to answering Defendant No.2 by various documents inter alia the Agreement to Sell registered General Power of Attorney, Registered Will, Possession Letter. The Defendant No.2 was put in possession of the front portion of the shop with the concurrence and acquiesce of the Plaintiff, after taking the possession as far back as 2001, the answering Defendant is in continuous uninterrupted possession and enjoyment of the front portion of the Shop. It is further submitted that there were two electric meters and dues were payable which were not paid by the Plaintiff and Defendant No.1 and the concerned Deptt. Delhi Vidyut Board removed the entire material like electric meter, service etc. vide letter No. NZ-016-6726494 Book No.C-005 connection No.224/33567 dated 30.07.2001 duly signed by the Plaintiff, the Defendant No.1 and Defendant No.2. It is further submitted that the plaintiff applied for lease hold to free hold after signing the application by the Plaintiff and the Defendant No.2 as power of attorney holder and it is in the full knowledge of the Plaintiff that the Defendant No.2 is the general attorney of the Defendant No.1 and is fully competent and authorized to look after and manage the half portion of the shop No.53, Mehr Chand Market, Lodhi Road, New Delhi vide General Power of Attorney duly registered in the office of Joint Registrar vide document No.3172 Vol. No.637 in Addl. Book No.4 on pages 150 to 154 dated 2.7.2001.

3. In reply to para No.3 of the Plaintiff, it is not denied that the allotment of the suit property was in the joint name of the plaintiff and the defendant No.1 all the correspondence exchanged with the Govt. of India in the joint name of the plaintiff and the defendant No.1 but it is denied that the Plaintiff and the defendant No.1 continue to enjoy, the undivided possession of the entrance from the front and had

common keys for the entrance from the front and back of the suit property as alleged. In fact, the plaintiff is using the back portion of 75% of the suit property as godown of plastic Dana, Rubber components, chemical powder which material are hazardous to the health of the general public and the neighbours life. It is further submitted that with the mutual understanding, the Plaintiff is having the possession of 75% of the suit property in the back portion in which he is running his own business as stated and holding independent keys of his portion since 2001 and the Defendant No.1 was running the business of STD, ISD, PCO and photocopy center in front portion through her general attorney, the Defendant No.2 and she is having the full control and command and possession over the business and holding the keys of front portion w.e.f. 2001. Neither the Plaintiff is holding any keys of the front portion of the shop nor the Defendants are holding/keeping the keys of rear/back portion of the shop since 2001. Both the Plaintiff and Defendants are holding/keeping the keys of their respective portions independently as per mutual understanding arrived at between them in 2001. It is the Plaintiff who is creating obstructions in the business of the Defendant No.2, threatening to dispossess and to create third party interest.

20. In reply to para 20 it is submitted that the Plaintiff and the answering Defendant through Defendant No.1 are joint owners but as per the apportionment of the ground floor is concerned the same has been achieved by mutual consent and acquiesce and the same is a closed Chapter. (emphasis added)

17. The documents filed by the defendant No.2 include photocopies of the Agreement to Sell, Possession Letter and General Power of Attorney, all dated 06.07.2001 executed by the defendant No.1 in favour of the defendant No.2. Additionally, the defendant No.2 has filed a copy of the registered will dated 02.07.2001 executed by the defendant No.1 in her favour.

18. On a perusal of the recitals contained in the Agreement to Sell dated 06.07.2001 executed by the defendant No.1 in favour of defendant No.2, the following para is considered relevant:-

**AGREEMENT TO SELL AND PURCHASE**

Whereas the FIRST PARTY is the absolute owner and in possession of ONE HALF SHARE OF BUILT UP SHOP NO.53, AREA MEASUREMENT 38.69 sq.mtrs., (OUT WHICH POSSESSION 10 FT X 10 FT), given front portion of shop measurement 10ft x 10ft., (including varandah and roof rights, also authorise for take possession from S.C.AGGARWAL), half portion of entire shop, situated at MEHAR CHAND MARKET, LODHI COLONY, NEW DELHI, allotted by Directorate of Estate, Nirman Bhawan, vide Letter No.DE/MKT22/53/64 dt. 15/1/1997....

19. The relevant extract of the Possession Letter dated 6.7.2001 executed by the defendant No.1 in favour of defendant No.2 is reproduced hereinbelow:

#### POSSESSION LETTER

I, SHRI B.K. GOEL SON OF LATE SHRI M.R. GOEL RESIDENT OF 9/18, EAST PUNJABI BAGH, DELHI, have sold ONE HALF SHARE OF BUILT UP SHOP NO.53, AREA MEASUREMENT 30.69 sq. mtrs., (OUT WHICH POSSESSION 10 FT X 10 FT), given front portion of shop measurement 10ft x 10ft., (including varandah and roof rights, also authorise for take possession from S.C.AGGARWAL), half portion of entire shop, situated at MEHAR CHAND MARKET, LODHI COLONY, NEW DELHI, allotted by Directorate of Estate, Nirman Bhawan, vide Letter No.DE/MKT22/53/64 dt. 15/1/1997....

20. Following is the relevant extract of the General Power of Attorney dated 6.7.2001 executed by the defendant No.1 in favour of defendant No.2:-

#### GENERAL POWER OF ATTORNEY

Be it known to whom it may concern that I, SHRI B.K. GOEL SON OF LATE SHRI M.R. GOEL RESIDENT OF 9/18, EAST PUNJABI BAGH, DELHI (hereinafter called the Executant do hereby appoint, nominate and constitute SHRIMATI SAVITRI GAUTAM WIFE OF SHRI CHANDER PRAKASH RESIDENT OF E-49, B.K. DUTT COLONY, NEW DELHI as my lawful legal general attorney and authorise her to do the following acts, deeds and things, for and on my behalf and in my name in respect of ONE HALF SHARE OF BUILT UP SHOP NO.53, AREA MEASUREMENT 30.69 sq. mtrs., (OUT WHICH POSSESSION 10 FT X 10 FT),

given front portion of shop measurement 10ft x 10ft., (including varandah and roof rights, also authorise for take possession from S.C.AGGARWAL), half portion of entire shop, situated at MEHAR CHAND MARKET, LODHI COLONY, NEW DELHI, allotted by Directorate of Estate, Nirman Bhawan, vide Letter No.DE/MKT22/53/64 dt. 15/1/1997....

21. The extract of the will dated 2.7.2001 executed by the defendant No.1 in favour of defendant No.2 is as follows:-

#### WILL DEED

WHEREAS I am the owner and in possession of ONE HALF SHARE OF BUILT UP SHOP NO.53, AREA MEASUREMENT 30.69 sq. mtrs., (OUT WHICH POSSESSION 10 FT X 10 FT), given front portion of shop measurement 10ft x 10ft., (including varandah and roof rights, also authorise for take possession from S.C.AGGARWAL), half portion of entire shop, situated at MEHAR CHAND MARKET, LODHI COLONY, NEW DELHI, allotted by Directorate of Estate, Nirman Bhawan, vide Letter No.DE/MKT22/53/64 dt. 15/1/1997....

22. On examining the averments made by the defendant No.2 in the written statement read in conjunction with the recitals in the documents of sale in respect of the subject shop executed by the defendant No.1 in favour of the defendant No.2, there is no manner of doubt that she does not claim entitlement to more than one half share in the said shop. The position taken by the defendant No.2 that she is the power of attorney holder of the defendant No.1 and that he had entered into an Agreement to Sell with her in respect of the subject shop would at best mean that the defendant No.1 could have sold his 50% undivided share therein to her which is evidenced from the recitals in the set of sale document filed by the defendant No.2. In this background, there is no ground for declining the prayer of the plaintiffs for passing a preliminary decree in respect of the subject shop, on the basis of the admissions made by the defendant No.2.

23. Accordingly, the present application is allowed and a preliminary decree is passed declaring that the plaintiffs and the defendant No.1 are entitled to 50% undivided share each in the subject shop. This is however without prejudice to the

plea taken by the defendant No.2 that she is in settled possession and occupation 25% area of the shop with the entrance from the front side and the plaintiffs are in settled possession of the remaining 75% area with the entrance from the back side, as per an alleged mutual understanding purportedly arrived at between the parties.

24. The application is disposed of.

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