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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CS(OS) 393/2020, I.A. 11549/2020, I.A. 7006/2022, I.A. 5083-5084/2024**

1. AMITA KISHORE MANSUKHANI
D/O LATE SHRI JAI KRISHNA
W/O SHRI KISHORE MANSUKHANI
R/O 8 NARSIMHA SOCIETY, 194, BOAT CLUB ROAD,
PUNE-411001, MAHARASHTRA,

...PLAINTIFF

(Through: Mr. Ankit Jain, Sr. Advocate with Mr.Vidit Gupta, Mr. Aditya Chauhan and Ms. Divyanshu Rathi, Advocates.)

versus

1. VIKRAM KRISHNA
S/O LATE SHRI JAI KRISHNA
R/O 12, SCHOOL LANE, NEW DELHI- 110001

2. NALINI KHANDELWAL
D/O LATE SHRI JAI KRISHNA
R/O 12, SCHOOL LANE, NEWDELHI-110001 .

3. KARUNA KRISHNA
D/O LATE SHRI JAI KRISHNA
R/O 2311, LOMBARD STREET,
PHILADELPHIA, PA-91436,
UNITED STATES OF AMERICA

4. SHASHI JAI KRISHNA
W/O LATE SHRI JAI KRISHNA

R/O 12, SCHOOL LANE, NEW DELHI- 110001

(SINCE DECEASED)

THROUGH HER LEGAL REPRESENTATIVES :

a) **AMITA KISHORE MANSUKHANI**
D/O LATE SHRI JAI KRISHNA
W/O SHRI KISHORE MANSUKHANI
R/O 8 NARSIMHA SOCIETY,
194, BOAT CLUB ROAD,
PUNE-411 001, MAHARASHTRA,

b) **VIKRAM KRISHNA**
S/O LATE SHRI JAI KRISHNA
R/O 12, SCHOOL LANE, NEW DELHI- 110001

c) NALINI KHANDELWAL
D/O LATE SHRI JAI KRISHNA
R/O 12, SCHOOL LANE, NEW DELHI- 110001

d) KARUNA KRISHNA
D/O LATE SHRI JAI KRISHNA
R/O 2311, LOMBARD STREET,
PHILADELPHIA, PA-91436,
UNITED STATES OF AMERICA

.....DEFENDANTS

(Through: Mr. Jai Sahai Endlaw and Ms.Shambhavi Kala, Advocates for D-1.
Mr. Siddhant Nath, Mr. Bhavishya Makhija and Mr. Amaan Khan, Advocates for D-2.
Mr. Varun Nischal and Ms. Saira Tagra, Advocates for D-3.)

% Reserved on: 25.08.2025
Pronounced on: 09.09.2025

JUDGMENT

I.A. 38041/2024 (under Order XII Rule 6 r/w Order XIV Rule 1 of CPC)

The present suit has been instituted by the plaintiff for partition of properties purportedly belonging to the Mitakshara HUF constituted by her father, late Col. Jai Krishna *(hereinafter referred to as 'the HUF')*.

2. The instant application has been filed by the plaintiff seeking decree of the suit on the basis of certain purported admissions by the defendants. The prayer clause of the instant application is reproduced below, for reference:

> *"I. Allow the present Application and decree the present suit in favour of the Plaintiff under the provisions of Order XII Rule 6 read with Order XIV Rule 1 of the Code of Civil Procedure, 1908.*
>
> *II. Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in favour of the Plaintiff and against the Defendants."*

3. The plaintiff claims that the defendants have refused to partition the suit property, thereby necessitating the institution of the present suit. The prayer clause of the plaint is extracted below, for reference:

> *"a) a decree for partition of the Green Woods Farm at M.G. Road, Chattarpur, Mehrauli, New Delhi admeasuring 20 bigha and 6 biswa bearing khasra Nos. 74/24/2, 76/10, 77/3/2, 77/4, 77/7, 77/8/1, 77/13/2, 77/14, 77/17, 77/6 by metes and bounds and in case this property cannot be partitioned, then auction the property and the share of the Plaintiff may kindly be given to the Plaintiff;*
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> *b) a decree for mandatory injunction to Defendant Nos. 1 and 4 to disclose full and detailed information on the assets, businesses, fixed deposits and bank accounts and movables ofthe said HUF and render true and faithful account of all income and transactions of the said HUF till date;*

c) a decree for partition of all the movable assets of the said HUF and a Mandatory Direction to the Defendants, in particulars Defendant Nos. 1 and 4 to give to the Plaintiff her 1/6th share in all the assets, businesses, fixed deposits and bank accounts and movables of the said HUF as found due;

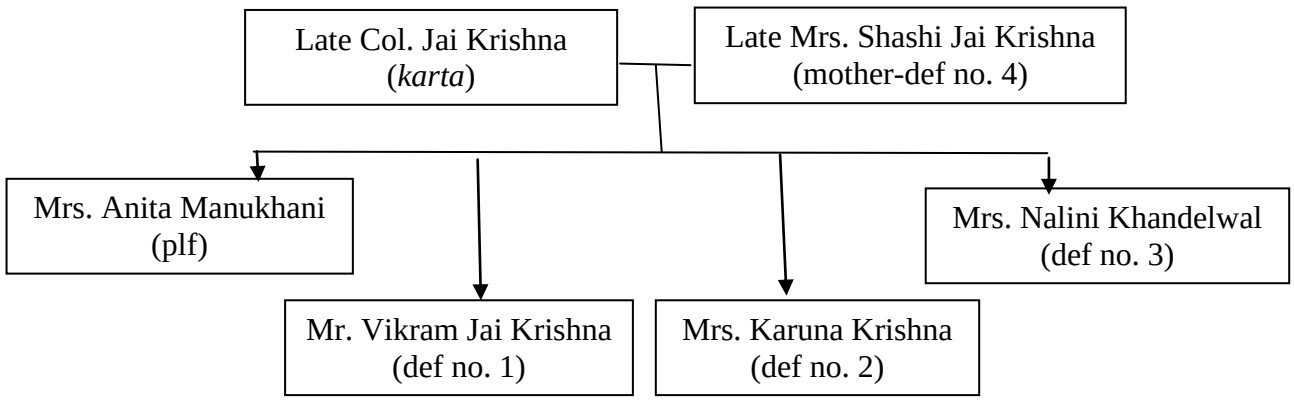
d) a decree for permanent injunction in favour of the Plaintiff and against the Defendants, thereby restraining the Defendants, their agents, servants, nominees, etc. etc. for selling, transferring, alienating or creating any third-party rights in the Green Woods Farm of the said HUF including but not limited to the immovable properties mentioned in the Plaint;

e) All costs of the suit against the Defendants;

f) Any other relief or relief(s) deemed fit and proper by the Court;

g) pass any other or further relief(s) as this Hori'ble Court may deem just and proper in the interest ofjustice and in the facts and circumstances of the case."

4. The parties to the suit are members of the same family. Late Col. Jai Krishna, who passed away on 22.08.2002, was the *karta* of the HUF. The plaintiff and defendants no. 1 to 3 are his children, whereas, defendant no. 4, who passed away during the pendency of the instant suit, was his wife and mother of the other parties. The relationship between the parties is not disputed by any of them. The family tree of late Col. Jai Krishna is produced below, for reference:



5. It is the case of the plaintiff that late Col. Jai Krishna had ancestral property situated at Lucknow, which was sold by him around the years 1965-66. She further claims that the proceeds from the said sale were used by late Col. Jai Krishna to purchase the agricultural land in the revenue estate of Mehrauli i.e. Green Woods Farm, M.G. Road, Chattarpur, New Delhi admeasuring 20 bigha and 6 biswa bearing khasra Nos. 74/24/2, 76/10, 77/3/2, 77/4, 77/7, 77/8/1, 77/13/2, 77/14, 77/17, 77/6 *(hereinafter referred to as the suit property)* in the name of defendant no. 4, on behalf of and for the benefit of the HUF.

6. It is the case of the plaintiff that late Col. Jai Krishna left behind his last Will and Testament dated 04.05.2002, whereby, he bequeathed all his assets in favour of defendant no.4 and the other legal heirs had given no objections to the said Will. The plaintiff claims that by virtue of the said Will, defendant no.4 had inherited only the undivided share of late Col. Jai Krishna in the said assets of the HUF.

7. The plaintiff being a Class-I legal heir of late Col. Jai Krishna, as per the Schedule to the Hindu Succession Act, 1956 *(hereinafter referred to as the HSA)* is stated to be entitled for 1/6th share in the properties of the HUF under Section 6 of the HSA.

8. It is the plaintiff's case that subsequent to the 2005 amendment to the HSA, defendant nos.1 to 4, in order to deprive the plaintiff of her legitimate share in the properties of the said HUF, executed a Deed of Dissolution dated 15.12.2006 *(hereinafter referred to as 'dissolution deed')* behind her

back, whereby, the said HUF was sought to be dissolved without allotting any share to the plaintiff.

9. Mr. Ankit Jain, learned senior counsel appearing on behalf of the plaintiff, has made the following submissions:

9.1. The dissolution deed records that the suit property formed a part of the HUF. The said document was executed by the defendants, therefore, they should be deemed to have admitted to the contents thereof, enabling the Court to partition the suit property.

9.2. The Consolidated Income Tax Returns for the Assessment Years 1992-93, 2004-05, and 2005-06 *(hereinafter referred to as the income tax returns)* were filed by defendant no. 4, and the same also record that the suit property was the property of the HUF.

9.3. Defendants No. 1 and 4 have denied the said documents in their affidavits of admission/denial, only on their mode of proof; the contents of the documents have not been specifically denied.

9.4. In paragraph 10 of the written statement of defendant no. 1, it is stated that defendant no. 4 had bequeathed her ‘share’ in the farm property to defendant no. 1. This indicates that the interest vested in defendant no. 4 in the suit property was restricted only to her share, and that she was not the absolute owner of the same. This amounts to an admission that the suit property formed a part of the HUF.

9.5. The order of the Joint Registrar dated 11.10.2020 records that the defendants have been deemed to have admitted certain documents of the plaintiff filed along with her replication, including the income tax returns. Therefore, the present case is fit to be decreed under Order XII Rule 6 of the CPC.

10. The instant application is strongly opposed by Mr. Jai Sahai Endlaw, learned counsel who appears on behalf of defendant no.1. He contends that firstly, any purported admission made by defendant no.4 does not bind him, secondly, there is no unequivocal admission by defendant no.1. According to him, the instant application is misconceived and deserves to be dismissed.

11. Mr. Jai Sahai Endlaw, learned counsel for defendant no.1, has advanced the following submissions:-

11.1. There does not exist any admission by defendant no. 1 that the suit property forms a part of the HUF, so as to enable the Court to decree the suit as prayed in the insant application. Defendant no. 1 has in fact, objected to the mode of proof of the dissolution deed and the income tax returns as they were photocopies;

11.2. The stand taken by defendant no. 4 in her reply to the legal notice sent by the plaintiff clearly indicates that the defendants have always maintained that the suit property was not a part of the HUF as claimed by the plaintiff;

11.3. Defendant no. 4 was not competent to file the income tax returns of the HUF. Therefore, the contents of the same have also been denied by the defendants;

11.4. The plaintiff is not in possession of the suit property, whether actually or constructively. Even if, without prejudice, it is assumed that the suit property forms a part of the HUF, the plaintiff has been ousted therefrom, as defendant no. 4 has transferred the suit property to defendant no. 1 *vide* General Power of Attorney and Will, both dated 04.06.2011. Therefore, she ought to have paid *ad-valorem* Court fees for the purposes of recovery of possession in respect of the said property. However, since the plaintiff has paid only a fixed Court fee in the said respect, the suit cannot be decreed as prayed in the instant application.

12. I have considered the submissions made by learned counsel for the parties and also perused the record.

13. The provision under Order XII Rule 6 of the CPC envisages that the Court may decree the suit, either wholly or in part as it thinks fit, in light of any admission of fact by the defendants. The said provision is extracted below, for reference:

> *"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 any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. (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."*

14. It is settled law that admissions, under Order XII Rule 6 of the CPC, must be unequivocal, categorical and clear, in order to enable the Court to invoke its power to decree the suit. Of course, there is no formal requirement of the admissions being in writing as even in oral admissions, the Court can proceed to decide the suit. Reference in this regard can be made to the decision of the Supreme Court in ***Karan Kapur v. Madhuri Kumari***,[1] wherein, the Court examined in detail, the scope of the power to make orders under Order XII Rule 6 of the CPC. The relevant portion of the said decision ios reproduced below, for reference:

> *"23. Order 12 Rule 6 confers discretionary power to a court who "may" at any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.*
>
> *24. Thus, legislative intent is clear by using the word "may" and "as it may think fit" to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the court can refuse to invoke the power of Order 12 Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by the other, and the court is satisfied to the nature of admission, then the parties are not compelled for full-fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the court a decree be drawn accordingly and parties to the case is not required to go for trial."*

15. In the context of the aforestated legal position, the Court may now examine whether it is a fit case to exercise the discretionary powers under

[1] (2022) 10 SCC 496

Order XII Rule 6 of CPC in light of the nature of purported admissions in the instant case.

16. The case of the plaintiff-applicant rests, principally, on the purported admission of two documents by the defendants; the first being the dissolution deed, and the other being the income tax returns. Learned counsel for the plaintiff seems to premise the application on the presumption that the said documents have been deemed to be admitted by the defendants *vide* order of the concerned Judicial Registrar dated 11.10.2023. The said order indicates that the plaintiff had filed the documents along with her replication to the defendants' written statements, apart from the documents she had filed along with her plaint. As per the said order, the defendants were deemed to have admitted only the documents filed along with the replication and not the ones filed along with the plaint. Notably, the two documents relied upon by the plaintiff in the instant application were filed along with the plaint. Defendant no. 1, in his affidavit of admission/denial dated 27.03.2021, defendant no. 4, in her affidavit of admission/denial dated 15.02.2021 and defendant no. 2 who has adopted the affidavit of defendant no. 4, have categorically denied the said documents.

17. It is pertinent to note that defendant no. 4 has objected to the mode of proof of the said documents, on the ground that they are photocopies. The plaintiff has construed it to mean that the contents of the documents have been admitted as the objection was only qua mode of proof. The said proposition is liable to be rejected for being misconveived. The provision under Section 64 of the Evidence Act mandates that documents must be proved by primary evidence except in cases otherwise provided for. Under

Section 65 of the Evidence Act, documents may be proved by secondary evidence in specific cases. Upon denial by defendants no. 1, 2, and 4, the said documents being photocopies, in order to dislodge the said objections, the plaintiff ought to have either produced the originals of the said documents, or satisfied the Court that secondary evidence could be allowed to prove them. An objection regarding mode of proof of a document is distinct from the one regarding admissibility of the document. Once a document is found to be inadmissible on mode of proof, there is no question of its contents being admissible without proving its genuineness first. Reference may be made in this regard, to the decision of the Supreme Court in ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple***,[2] wherein the Court, while holding that objections to the mode of proof of a document are to be raised at the time of their marking of exhibits, reasoned that the same was a rule of fair play, intended to enable the party tendering the document to rectify the defect in its mode of proof. The relevant portion of the said judgment is extracted below, for reference:

> *"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 the mode of proof alleging the same to be irregular or insufficient. In the first case,*

[2](2003) 8 SCC 752

> *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."*

18. However, the plaintiff-applicant has neither produced primary evidence to prove the said documents, nor made out a case for permitting proof of the documents by secondary evidence. The said documents, therefore, have not yet been admitted as evidence. Furthermore, even if the defendants have not specifically objected to the contents of the documents, it could not be inferred that they have admitted the contents. When the mode of proof is questioned, it falls upon the plaintiff to first tender the documents in accordance with the admissible mode and thereafter, the contents of the

documents could be relied upon to confer or deny rights to any party. In the present case, the defendants have raised prompt objections qua the mode of proof and therefore, a finding of admission qua the said documents cannot be returned against the defendants. For the purpose of Order XII Rule 6, the admission ought to be clear and unequivocal, and it could not be vaguely inferred in the manner sought to be done herein.

19. Nevertheless, a perusal of the written statements of defendants no. 1 and 4 indicates that neither of them have admitted the contents of the aforesaid documents in their pleadings. In fact, the case set up by them in their written statements, is that the suit property was the self-acquired property of defendant no. 4 and not part of the HUF. Paragraph no. 7 of the written statement filed by defendant no. 1 is reproduced below, for reference:

> *"7. As already stated above, Green Woods Farm was never a part of Col. Jai Krishna HUF. It was purchased as part of a larger tract of land admeasuring 60 Bigha 1 Biswa, by way of a registered Sale Deed dated 10.2.1966, in favour of Defendant No.4, M/s Bhai Traders & Financiers Private Limited and Northern India Plywood Private Limited. Subsequently, the said larger tract of land was partitioned between the aforesaid co-owners by a Judgment passed in a Civil Suit titled 'Northern India Plywood Ltd. v. Bhai Traders and Financiers & Anr.' filed before the High Court of Delhi at New Delhi, wherein Defendant No.4 acquired her separate defined share in the entire land. Thereafter, by way of an Agreement of Exchange dated 3.10.1990 between M/s Montari Enterprises Pvt. Ltd. (i.e. the successor of M/s Bhai Traders & Financiers Private Limited) and Defendant No.4, the Defendant No.4 came into possession of the area described in Schedule C thereof. During all these years and for all these transactions, the Defendant No. 4 always represented and was considered as the absolute owner of the property. There was never any mention of the HUF (or any other person) being the owner of the property. The fact that Defendant No. 4 was the owner of the property was accepted and recognised by all the family members. Her ownership was never challenged or disputed by any person at any point of time."*

20. Paragraph no. 7 of the written statement filed by defendant no.4 is also reproduced below, for reference:

> *"7. That the Green Wood Farms 1s the self-acquired and absolutely independent property of the Answering Defendant No. 4. That it is submitted that this land at Mehrauli, New Delhi was purchased out of her own funds in 1966 and was never transferred, included or treated as the asset of Col. Jai Krishna HUF. It is pertinent to mention here that the land at Mehrauli was initially purchased by Answering Defendant No. 4 out of her own funds jointly with two other persons vide duly registered joint sale-deed dated 10.02.1966 registered as No. 1249 in Book No. 1 , Volume No. 1474 on pages 111-120 before Sub-Registrar, New Delhi on 22.02.1966 but later on partitioned among the three owners and Answering Defendant No.4's portion of the partitioned land (known as Green Wood Farms) has always been under Answering Defendant No.4's ownership and possession and no one has any claim over the same."*

21. Furthermore, defendant no. 1, in his written statement claims that defendant no. 4 had in fact executed Will dated 04.06.2011, in his favour, in respect of the suit property. The said paragraph is reproduced below, for reference:

> *"The Plaintiff and Defendants No. 2 and 3 have always been aware of the Defendant No.4's intention to transfer her rights in the Green Woods Farm in favour of Defendant No.1 and never raised objection qua the same until filing of the present Suit. In fact, all the parties to the Suit have had several discussions and meetings to divide the other assets belonging to Defendant No.4, in order to avoid any dispute among themselves at a later stage. It is common knowledge among the parties that the Defendant No.4 had already executed a Will in favour of answering Defendant and further also conveyed her rights in Green Woods Farm to the answering Defendant. The only reason that a Sale Deed could not be executed is due to non-availability of NOC from Tehsildar of the Sub-Division of the concerned District. Under the pretext of recent Judgments of this Hon'ble Court and the Supreme Court, the Plaintiff now seeks to overcome objections as to its belatedly approaching this Court for partition of the said Green Woods Farm."*

22. The averments in paragraph no. 10 of the written statement filed by defendant no. 1, which are asserted on behalf of the plaintiff as amounting to

admission that the suit property was a part of the HUF, are reproduced below, for reference:

> *"10. The Defendant No.4 had always promised the answering Defendant that she would transfer Green Woods Farm in his favour exclusively. In or about 2009, the answering Defendant was informed by Defendant No.4 that she had executed a registered Will dated 30.6.2009 wherein she had inter alia bequeathed her rights, title and share in Green Woods Farm exclusively to the Plaintiff."*

23. If the written statement of defendant no. 1 is appreciated in totality, the averments in the said paragraph cannot be deemed to be any admission that the suit property was put in the hotchpot of the HUF. It merely suggests that defendant no. 4 had promised defendant no. 1, exclusive title over the property, to the exclusion of her own rights and interests. It could not be construed to mean that the same was being taken out of the common hotchpot of HUF or that defendant no. 4 had proposed to transfer only her undivided rights from the HUF, as sought to be done by the plaintiff. The present submission stems out of a clear misreading of the written statement filed by defendant no. 1.

24. Therefore, the defendants cannot be deemed to have made any admission of fact so as to enable the Court to decree the suit as prayed in the instant application.

25. It is pertinent to note that one of the grounds of defence taken by defendant no. 1 is that the plaintiff has not paid sufficient Court fees. It is his case that the plaintiff is neither in actual nor constructive possession of the suit property, and therefore, liable to pay *ad-valorem* Court fees for the prayer of partition/possession. He claims that even if, without prejudice, it is assumed that the suit property forms a part of the HUF, the overt act of

transfer of the same to him by defendant no. 4 would amount to ouster of the plaintiff, so as to bar any presumption of constructive possession.

26. However, a perusal of the record of the case indicates that documents produced by defendant no. 1 to support his contention of ouster of the plaintiff, have been denied by her in her affidavit of admission/denial. Therefore, in the absence of conclusive proof of ouster, the plaintiff cannot be deemed to have been dispossessed of the suit property. Thus, the said objection will have to be adjudicated during the course of trial.

CONCLUSION

1. In view of the foregoing discussion, the Court concludes that there is no clear, unequivocal, and unambiguous admission by the defendants so as to make the present case fit for passing a judgment under Order XII Rule 6 of the CPC.

2. In view of the aforesaid, the instant application stand disposed of.

3. It is pertinent to note, however, that all rights and contentions of the parties are left open to be raised at the appropriate stage.

CS(OS) 393/2020, I.A. 11549/2020, I.A. 7006/2022, I.A. 5083-5084/2024

Let the matter be be listed before the concerned Joint Registrar on 10.11.2025 for taking up necessary steps in accordance with law.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 9, 2025
Nc/amg