

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA NO. GA/2/2022
In CS/218/2021

AMALGAMATED FUELS LIMITED
Vs
ABDUL KADER MALLICK AND ANR

BEFORE:
THE HON'BLE JUSTICE SUGATO MAJUMDAR
Date: 25th July, 2025

Appearance:

Mr. Avinash Kankani, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Suman Majumder, Adv.

...For the Plaintiff

Mr. Sourajit Dasgupta, Adv.

Md. Rahaman, Adv.

... for the Defendants.

The Court: GA 2 of 2022 is filed by the Plaintiff, praying for passing a decree of eviction, recovery of possession from the Defendants, decree for mesne profit and others. Speaking in another way, the Plaintiff has filed this application, praying for a judgment on admission.

Contentions of the petition are that the Defendants are in exclusive possession of the suit premises and residing there illegally, without authority; there is no jural relationship between the Plaintiff and the Defendants. Therefore, the Defendants are not entitled to remain in the possession. The Defendants filed written statement

wherein title of the Plaintiff was denied and claimed title by way of adverse possession. The Defendants admitted that there is no jural relationship between the parties. It is further contended in the application that the Defendants failed to disclose any material document or particular in support of the claim of the adverse possession. They are basically trespassers and liable to vacate the suit premises.

Affidavit-in-Opposition was filed by the Defendants contending therein that far from admitting the claim of the Plaintiff, the Defendants challenged the title of the former in the suit property. It is further plea of the Defendants that they have perfected their right, title and interest in the suit property by way of adverse possession. It is contended that triable issues have been raised by the Defendants in the written statement. It is denied that any admission have been in the written statement on the strength of which judgment upon admission may be passed.

The Plaintiff filed Affidavit-in-Reply in which, apart from denying the contentions of the Defendants, it is specifically pleaded that in terms of letter dated 15/11/2019 the Defendant no. 1 requested the Plaintiff to allow him to occupy the flat till death as a tenant on payment of monthly rent. Various correspondences between the parties including the letter dated 15/11/2019 are annexed to the Affidavit-in-Reply to substantiate the content that the Plaintiff asked the Defendants to vacate the suit premises.

The Learned Counsel for the Plaintiff argued that although the plea of adverse possession is there in the written statement, particulars required to establish adverse possession are missing. Referring to **Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan & Ors. [(2009) 16 SCC 517]**, **Karnataka Board of Wakf Vs. Government of India & Ors. [(2004) 10 SCC 779]** that the

decisions of Supreme Court of India, Learned Counsel argued that particulars should be furnished to substantiate the claim of adverse possession.

Secondly, it was argued that the letter dated 15/11/2019 demolishes the plea of the adverse possession. It very clearly shows that Defendants are not in adverse possession.

Referring to Order XII Rule 6 of the Code of Civil Procedure, 1908, the Learned Counsel submitted that the word “otherwise” opens up ambit of consideration of admission. Admission should not be confined in the pleadings itself but it may be contained in other documents which may be considered for the purpose of admission under Order XII Rule 6(1) of the Code of Civil Procedure, 1908.

The Learned Counsel for the Defendants submitted firstly that contentious issues exist between the parties in the present suit. Question of adverse possession is a mixed question of law and fact to be decided in trial. There is no admission in the written statement that the Plaintiff is entitled to get a decree, as prayed for. Claim of rival title requires adjudication. Secondly, it was argued that the document dated 15/11/2019 or other documents referred to the Plaintiff are not in the list of documents annexed to the plaint. At this stage, these documents are extraneous for deciding on the issue of admission.

I have rival submissions.

Provision under Order 12 Rule 6 CPC read as under:

“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.”

Scope of passing of judgment on admission under Order XII Rule 6(1) of the Code of Civil Procedure, 1908, were considered by the Supreme Court of India number of cases. In **Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India & Ors. [(2000) 7 SCC 120]** the Supreme Court of India observed that admissions are of many kinds; they may be considered as being on the record as actual if they are either in the pleadings or in answer to interrogatories or implied from pleadings by non-traversal. It was further observed that as between parties by agreement or notice there may be admission. In **Karam Kapahi & Ors. Vs. Lal Chand Public Charitable Trust & Anr. [(2010) 4 SCC 753]** the scope of Order XII Rule 6(1) of the Code of Civil Procedure, 1908 and passing of judgment on admission was extensively considered and discussed. The Supreme Court of India also considered the scope of the word “or otherwise”. Referring to **Uttam Singh Duggal’s** case and also referring to a Judgment passed by Madhya Pradesh High Court in **Shikharchand Vs. Bari Bai [AIR 1974 MP 75]**, It was explained that there must be clear admission of fact in the face which it would be impossible for the party making it to succeed. Subsequently, in **Himani Alloys Ltd. Vs. Tata Steel Ltd. [(2011) 15 SCC 273]** it was explained by the Supreme Court India that admission should be categorical; it should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order XII Rule 6(1) of the Code of Civil Procedure, 1908 being an enabling provision is neither mandatory nor parentary but only discretionary. Unless admission is clear and unambiguous and unconditional,

discretion should not be exercised to deny the valuable right of the Defendant to contest a claim. Subsequently, in **S.M. Asif vs. Virender Kumar Bajaj [(2015) 9 SCC 287]** the Supreme Court India observed that power under Order XII Rule 6(1) of the Code of Civil Procedure, 1908 is discretionary and cannot be claimed as a matter of right; judgment on admission is rather a matter of discretion of the Court. Where the Defendants have raised objections which go to the root of the case would not be appropriate to exercise discretion under Order XII Rule 6(1) of the Code of Civil Procedure, 1908.

Coming to the case in hand, the Plaintiff filed the suit for recovery of possession from the Defendants on the ground that they are trespassers and/or unauthorized occupiers. It is contended that there was no jural relationship between the Plaintiff and the Defendants. In the written statement, Defendants raised the plea of adverse possession. Claim of the Plaintiff is traversed and rival plea on title is raised. Such plea does not admit the jural relationship between the parties but set up a rival title which opposes the plea of recovery of possession. Mere absence of jural relationship is not enough to pass the decree, as prayed for. When a rival title is pleaded the same should be adjudicated upon before passing any decree. Under no circumstance this is admission; rather the Court is invited to consider absence of jural relationship coupled with claim of rival titles between the parties. Such plea of adverse possession goes to the root of the matter negating the scope of exercise of discretion under Order XII Rule 6(1) of the Code of Civil Procedure, 1908.

The Learned Counsel for the Plaintiff vehemently argued that the particulars required to support of plea of adverse possession is absent which turned the plea into simple evasive denial. This argument of the Learned Counsel for the Plaintiff is not impressive in the present context. If particulars are absent in the written statement

such absence may work adversely against the Defendants but absence of such particulars are not relevant for the present purpose. At least absence of particulars cannot be construed as admission; it does not come within the ambit of the phrases, “or otherwise”. **Uttam Singh Duggal’s** case contemplates admission by non-traversal of plea. But the case is contrary here.

The Learned Counsel for the Plaintiff heavily relied upon the letter dated 15/11/2019 written by the Defendant no. 1. The scope of the word “or otherwise” was considered by the Supreme Court of India in **Uttam Singh Duggal’s** case as discussed above. This document is extraneous to the suit; does not figure even in the list of documents filed by either the Plaintiff or by the Defendants. Therefore, in the present context, this document cannot be looked into.

In nutshell, for the reasons stated above, the instant application is not considered favourably and stands dismissed.

GA 2 of 2002 accordingly stands disposed of.

Fix 2nd September, 2025 for framing of issues.

Discovery inspection, disclosure of documents as well as affidavit of denial of documents shall be complete in the meantime.

(SUGATO MAJUMDAR, J.)