

12

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

+ **CS(OS) 995/2002**

SUSHIL BHARDWAJ Plaintiff
Through Mr.S.S.Panwar, Advocate.

versus

VED PARKASH SHASTRI Defendant
Through Mr.Harvinder Singh with Mr.Mohit
Gupta and Ms.Bhawna Chopra Rustgi,
Advocate for defendants No.1 to 3.
Mr.Hari Narayan Takkar, Advocate for
defendant No.5.

% **28.08.2008**

CORAM:

Mr. Justice S. Ravindra Bhat

- | | | |
|----|---|-----|
| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat (Oral)

1. In this suit, the plaintiff seeks partition and permanent injunction against the defendants. The reliefs claimed include preliminary decree of partition in respect of properties being E-32, Satyawati Colony, Phase-III, Ashok Vihar, Delhi, and a vacant plot measuring 200 sq. yds., in HUDA Colony, Kurukushetra, Haryana, (which, the plaintiff contends, are joint family properties).

2. The brief facts necessary for the purpose of this order are that the plaintiff's father, Shri Ved Prakash Shastri, defendant No.1 herein (who has since deceased during the pendency of the proceedings), shifted to Delhi in 1960 along with his mother. The plaintiff further avers that his grandfather, Pt. Vasu Dev Bhardwaj died in 1965. He was survived by his widow and two other sons and a daughter. The plaintiff avers that after the death of his grandfather, his legal heirs mutually divided and partitioned the joint family properties. The properties, according to the plaintiff, which fell to the share of his father, i.e. the defendant No.1, became ancestral properties. It is alleged that the defendant No.1 as karta of his joint family (comprising of his sons and other family members,) acquired the two properties for which partition decree is sought in this case. It is averred that these properties were purchased with the funds which fell partly to defendant No.1's share in the partition with other members of his family as well as partly with his own funds.

3. The plaintiff avers that till 1986, he along with his wife and children were living in a small room on the first floor of E-32, Satyawati Colony, Phase-III, Ashok Vihar, Delhi. Thereafter, they shifted to his house at Shalimar Bagh, a residential flat allotted to his wife, then serving in Reserve Bank of India. It is claimed that the plaintiff No.1 had been regularly visiting his mother, i.e. the plaintiff

No.2, in order to look after her and also visited his room along with his family.

4. It is claimed that defendant No.1 (i.e. the plaintiff's father) and the defendant No.2 (i.e. the plaintiff's brother) are not inclined to give him any share in the joint family properties and are threatening to illegally dispossess him from joint family property, in his possession and unauthorizedly interfere with it. The plaintiff describes certain other proceedings including suit No.29/2001 titled "**Sushil Bhardwaj vs. Ved Parkash etc.**" in which the Court had granted him the liberty to see his ailing mother during the reasonable hours. The plaintiff further adverts to defendants No.4 and 5 having lodged police complaints against alleged illegal actions of defendants No.1 and 2 in relation to his mother.

5. The plaintiff avers that defendants No.1 and 2 are in possession of the complete front portion and one room in the back side of the property E-32, Satyawati Colony, Phase-III, Ashok Vihar, Delhi. It was alleged initially that the plaintiff No.2, i.e. the mother of plaintiff No.1 was in possession of the other property. During the proceedings, however, the plaintiff No.2 was dropped from the array of parties. The plaintiff also avers that on 20.5.2002, the defendants No.1 and 2 brought some unidentified persons and showed them the property. This led to a reasonable apprehension that the same would

be sold thus depriving the plaintiff from his share. The plaintiff has thus sought for the decree on the basis of these allegations.

6. The defendant No.1, during his life time, had filed a written statement jointly with his other son, he the plaintiff brother. At a later stage, in the proceedings, the said written statement was permitted to be amended. Later, on 3.12.2006, the defendant No.1 died. The defendant No.3 also adopted the common written statement of defendants No.1 and 2.

7. Broadly, the defendants contend that the plaintiff is not in actual or constructive possession of the suit property. They deny that the plaint discloses any cause of action and that the suit is bereft of any material particulars but comprises of vague averments. They denied that the property E-32, Satyawati Colony, Phase-III, Ashok Vihar, Delhi, is a joint family property; it is urged that the same is registered exclusively as that of defendant No.1. As far as the other property at Kurukushetra, Haryana, is concerned, the defendants contend that the particulars of such property are not even disclosed. The first defendant crucially also denies that his properties are HUF properties or that were acquired with any HUF funds. According to defendants, the late Pt. Vasu Dev Bhardwaj died in 1965 almost without property. It is not denied that the defendant No.1 had joined his service as a Teacher in 1948 in a School at Yamuna Nagar,

Haryana and subsequently shifted to Delhi when he joined the service in 1952.

8. This Court had, at the initial stage, on 29.5.2002, granted an interim order restraining the defendants from selling, transferring, alienating the properties, which are the subject matter of the suit. The defendants after entering appearance filed an application, i.e. IA No.5688/2002, under Order 39 Rule 4 CPC, for vacation of the interim order. That application has been pending on the file of this Court.

9. Learned counsel for defendants No.1 to 3 submitted that in the interregnum, the parties had filed their documents which were also admitted and denied. According to learned counsel, on a conspectus of the materials on record including Exhibits D-1 and D-2 marked in evidence, as well as the pleadings in IA No.5688/2002, there is no cause of action for the plaintiff and that the admissions, arising out of the said documents Exhibits D-1 and D-2, should compel this Court to exercise its powers under Order 12 Rule 6 CPC and dismiss this suit.

10. In support of the submissions, learned counsel for the defendant relied upon Exhibit D-1 document dated 25.12.1988. Counsel submitted that a careful reading of the entire document, particularly clauses 1, 2 and 6 disclose that the plaintiff had received his share in the properties of late defendant No.1 and had given up all

rights in relation to other properties. Learned counsel also relied on Exhibit P-2, a letter written on 27.6.1992 by the plaintiff to his paternal aunt, where according to counsel, he unequivocally mentioned about his giving up rights in relation to the defendant No.1's self-acquired properties.

11. Learned counsel submitted that these two documents read along with the pleading in IA 5688/2002, should be construed as a clear and unequivocal admission entitling the Court to dismiss the suit as the contents of such documents are contrary to the plaintiff's plea and the alleged cause of action. Counsel submitted that the so-called explanation given by the plaintiff in the reply to the IA 5688/2002, so far as it concerns these documents, is "moonshine" and highly implausible. It was submitted in this regard that the plaintiff withheld these documents which were crucial to the controversy and amounted to withholding of material facts.

12. Learned counsel submitted that the Court can always draw an inference based upon the materials on record, on the strength of Order 12 Rule 6 CPC, to infer whether any triable cause subsists in a suit or any other proceedings. Counsel relied upon the judgment of the Supreme Court reported as ***Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India***, AIR 2000 SC 2740 in support of the submission.

13. Mr. S.S.Panwar, learned counsel for the plaintiff and Mr.Hari Narayan Takkar, learned counsel for defendant No.5 (who supports the suit), submit that the contentions on behalf of the defendants are completely unmerited. Learned counsel contended that the Court should not pre-judge the issue, at this stage, solely on the basis of one document. It is contended that the plaint has clearly averred that the properties are HUF assets in which the plaintiff and the other defendants have shares. Counsel relied upon the proposition that once a claim for partition is made, the character of the suit assuming an adjudication for determining the shares of family members that there can then be no distinction between the parties; all of them would be entitled to be treated as plaintiffs in the proceedings.

14. It was next contended that the explanation to Ex.D-1, which is the main basis for claiming dismissal of the suit under Order 12 Rule 6 CPC is found in the reply to IA 5688/2002. Mr.Panwar, learned counsel for the plaintiff, relied upon the said pleading and submitted that the effect of document Ex.D-1 was explained by the plaintiff. According to counsel, the said document was extracted by defendant No.1, who proceeded thereafter to sell the property, i.e. 176, Harsh Vihar, which is said to have fallen in the share of the plaintiff. It is also urged that the said reply to IA 5688/2002 is to the effect that

original documents such as Agreements to Sell the said property were at all material times with the defendant No.1. Counsel submitted that on the basis of these explanations, there is no unambiguous admission so as to entitle the Court to pass a decree under Order 12 Rule 6 CPC, dismissing the suit. It was lastly urged on behalf of the plaintiff that the document Ex.D-1 cannot be relied upon, at this stage, as it is contrary to the written statement and the entire case set up on behalf of the defendants. Counsel emphasized, that the defendants No.1 to 3 all along took the position that the suit property E-32, Satyawati Colony, Phase-III, Ashok Vihar, Delhi, was not a joint family property. However, the manner in which they now want to use Ex.D-1 is to say that such property was joint family property and that the plaintiff had secured his share from it. Such contradictory pleas cannot be the basis of a decree on deemed admission.

15. Before this Court analysis the rival contentions, it would be necessary to extract the material documents. Ex.D-1 is a letter document admitted by the plaintiff. It was filed by the defendant on 5.7.2004. The said document (Ex.D-1) is dated 25.12.1988. A translation of the same has also been filed. The Ex.D-1 reads as follows:-

“Partition of our property has taken place on today the dated 25th December 1988 with my wife’s and my consent in the following manner:-

1. *My father possess immovable property which includes one house bearing No.D-32 at Satyawati Colony and a plot measuring 200 sq. yards bearing No.176, Harsh Vihar, which is lying registered in my name. Besides this, our family does not possess any other property.*
2. *As per the saying of mine and my wife, my father made me the absolute owner of plot bearing No.176 at Harsh Vihar. Any other family member does not have any right, title or interest in that plot. It is upto me whether I would retain it or sell it.*
3. *I shall pay in cash Rs.3.50 lakhs half of which is Rs.1.75 lakhs to my father as the value of half plot and I shall have the right over that plot after I will make the payment of that. After making the payment thereof none of the family members including my father have nothing to do with the profit and loss. I will alone be responsible for the profit and loss.*
4. *Whatever complaints or cases regarding this plot is pending prior to this date i.e. 25th December, 1988, my father shall be responsible for that.*
5. *If my brother and sister have any right title or interest in the property, then my father shall give the same to them from his other property, if any one has any right.*
6. *After this, my legal heirs etc. shall not have any right, title or interest of any kind in the family property.*
7. *I possess self acquired property. None of the family member except my mother does not have any right, title or interest therein.*
8. *Entire records of plot bearing No.176 such as lease share, certificate shall be handed over to me after getting it registered in my name. If any document is required in court proceedings, then the same shall be made available to me as and when required.*

*Sd/- illegible
S/o Pd.Basudev ji*

*Sd/- illegible
25th Dec.1988*

S/d illegible *S/d illegible*
(Sushma Bhardwaj) 25.12.88 S/o.Mr.Ved
Prakash
E-32, Satyavati Colony,
Ashok Vihar, Phase-II,
Delhi – 52.”

16. Ex.D-2 is a letter written by the plaintiff to his paternal aunt (Bhua) on 27.6.1992. It reads as follows:-

“27th June 1992,

Respected Aunty and Uncle

Charan Sparsh,

I want to make you aware with the present circumstances of my family. As you would know that father has made his Will, according to which Sanjeev and Manisha are the heirs. I had sent you the copy of the Will. Aunty, I want to tell you while clearing my situation that I have never talk to my father about the Will nor I have ever expected anything from him because I have the blessings of the God, because just one year before I have established a Computerised Electro-plating Plant, wherein 35 persons work and I am the only owner of that Address of the factory is:

*Bhardwaj Mettle Finning Company
73, Rajpura Gur Mandi
Behind Kan war Motor Service Station
Delhi-7.*

I have written this letter to you because father has registered a case in the police station, according to which father has stated that his life in danger because of me and my wife. I am not worried about that, but when he impleaded my wife – Sushma Bhardwaj as party, then you can understand what would be my feelings. Now it is upto you to decide. I make it clear to you and father that I have

nothing to do with his self acquired property. He has retired just one year before. He has never given a single penny to his grandsons. We have no regret. He has insulted your daughter-in-law in Reserve Bank 3-4 times in a month and this has been happening for the last five years. I have not told you. Now, father has got registered a case under Section 506. Aunty ji, I want to make it clear that neither I will ever go to Court nor I will do such an act from which you have to be ashamed of. Now I have left everything to the Court of God.

*Sd/-
Sushil Bhardwaj*

17. For a better appreciation of the controversy, it would be necessary to extract the relevant pleading in IA 5688/2002. The defendants – applicants aver in relation to the said document Ex.D-1, as follows:-

“The fact that the plaintiff had never been in possession of the small temporary room on the first floor and his such contention is knowingly false and by way of an afterthought is clear from the following facts and circumstances:-

(i) That the plaintiff, on 25.12.1988, had himself given in writing, duly signed by him and his wife, that since his father, defendant No.1, on his and his wife’s asking, had made him the full owner of the Harsh Vihar Plot No.176, out of immovable properties of his father, the other being House No.E-32, Satyawati Colony, the plaintiff and his family members would not claim any right whatsoever in the family property. This writing/undertaken, there was not mention of the plaintiff reserving any roof right in the

Satyawati Colony house.

(ii) That the plaintiff had subsequently sold out and appropriated the entire consideration amount for the property No.176, Harsh Vihar without the permission of the defendant No.1 and besides he was insulting and disobedient and as such the defendant No.1 had executed a registered Will dated 20.11.1991, bequeathing the entire property No.E-32, Satyawati Colony house in favour of his younger son, defendant No.2. When the plaintiff became aware of the Will, he had himself written a letter dated 27.6.1992 to his paternal Aunt (Bhua), wherein while referring to the Will, he had categorically stated that he had no claim whatsoever in the self-acquired property of his father."

18. The plaintiff replied to this application on 11.3.2003. The material part of this reply which contains the explanation relied upon by his counsel is as follows:-

"It is submitted that the alleged writing dated 25.8.1988 is not at relevant, in any manner whatsoever, in the context of the case in hand. It is submitted that the defendant No.1 and 2 are trying to distort the fact, as in the said writing the plaintiff and or his wife have no where given up their claims in the suit property. The defendant No.1 and 2 have concealed the true facts which are as under:-

I. That the said plot No.176, Harsh Vihar, Delhi was the absolute property of the plaintiff and the defendant No.1 and 2 had no right and or interest in the same. As during the period of early/mid 1980's the defendant No.1, without the knowledge, information, and acceptance of the plaintiff herein, mischievously entered into various agreements to sell the said property No.176, Harsh Vihar, Delhi (which was absolutely belonging to the plaintiff) with various parties, as he without

the knowledge and acceptance of the plaintiff, also received advance sale considerations from such parties. At the same time, the defendant No.1 was, illegally and unlawfully, also keeping the custody of all the original documents of the said property bearing No.176, Harsh Vihar, Delhi. The defendant No.1 in fact by entering into such agreements to sell with various parties and by receiving huge money as advance consideration cheated all these parties. To the knowledge of the plaintiff couple of these parties also filed various suits against the defendant No.1, it is only in these circumstances it is written in para No.6 of the said writing dated 25.8.1988 that the defendant No.1 herein would be owning the responsibilities of all such litigations and claims. Further in para No.7 of the said writing the plaintiff has clearly written that the said property is absolutely self earned property of the plaintiff.

II. As stated above, as the defendant No.1 was keeping the custody of all the original documents, moreover, by mischievously entering into false and mischievous deals of agreement to sell, the defendant No.1 illegally and unlawfully without any reasons and circumstances got extracted a sum of Rs.3,50,000/- (Rupees Three Lakh and Fifty Thousand Only) from the plaintiff herein, by black mailing the plaintiff, and then only he released the original records of the said property No.176, Harsh Vihar, Delhi, which is so stated in para No.8 of the said writing.

III. Thus the said writing was got extracted by the defendant No.1 illegally and unlawfully, from the plaintiff, and the plaintiff has no where legally and or otherwise relinquished his rights/share in the suit property."

19. Order 12 Rule 6(1) CPC empowers the Court to enter judgment on admissions provides that:-

“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 any 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.”

20. Order 12 Rule 6(2) CPC deems that a judgment under this provision would entail a consequential decree.

21. The above provision of Order 12 Rule 6 CPC has been apparently conceived in a public interest to ensure speedy disposal of cases once one or the other party to the litigation admits to a plea or document which would go into the root of the controversy. These provisions, in a sense, short circuits the trial process; if any admission fatal to the case of one of the party is discerned on motion by the party seeking advantage of it, the Court can proceed straightaway to make order. The Supreme Court in ***Uttam Singh Dugal's*** case (supra), outlined the object of this provision as one, to enable a party to obtain speedy judgment at least to the extent of relief which according to the Court, one or the other party would be entitled. It was underlined that the Court should not unduly narrow down the rule as its object is to enable one party or the other to obtain a speedy

judgment. The Court also, in a broad manner, indicated the proper method of construing such admissions. Paragraph 15 of the said judgment states that:-

“15. Even without referring to the expression ‘otherwise’ in Rule 6 of Order XX, CPC, we can draw an inference in the present case on the basis of the pleadings raised in the case in the shape of the applications under that Rule and the answering affidavit which clearly reiterates the admission. If that is so, interpretation of the expression ‘otherwise’ becomes unnecessary.”

22. In a previous decision, i.e. ***Shikharchand vs. Mst. Bari Bai***, AIR 1974 MP 75, the High Court had much arrived at much the same conclusion in relation to the term “otherwise”, saying that it clearly indicates that it is open to the Court to base the judgment on statement made by a party not only in the pleadings but also *de hors* the pleadings. The Court crucially also held that such admissions may be made either expressly or constructively. It may also be noticed that a provision under Order 12 Rule 6 CPC is flexible enough to enable the Court to dismiss the suit if the situation so warrants. The provision is not confined to an order decreeing the claims of the plaintiff, against the defendant; the terminology used is wide enough to comprehend situations where admissions either in the pleadings or “otherwise” can result in dismissal of the suit, which would result in the drawing up of a decree. The question on the merits here,

therefore, is whether the two documents relied upon by the defendants, i.e. Ex.D-1 and D-2 are unambiguous and clear admissions which should persuade the Court to dismiss the suit.

23. The suit is one for partition although the plaintiff has claimed for partition of some property in Kurukshetra yet till date he has not been supplied any particulars. No document in support also has been furnished in that regard. The only other property which finds mention in the relief clause is the Satyawati Colony property measuring 200 sq. yds. The plaintiff avers that the defendant No.1 shifted to Delhi in 1960 and that he received his share from a partition which took place in 1965. These facts are disputed by the defendants including the defendant No.1 who had joined in the common written statement. According to them, the property was acquired in 1958, even before the alleged partition.

24. The plaintiff has averred about having lived in the said property at Satyawati Colony till 1986 and moved out thereafter. The bone of contention here is that whether at the stage when Ex.D-1 was executed, the parties contemplated a division and extinguishment of the plaintiff's share is concerned. Ex.D-1, as noticed earlier, was filed in the year 2004. Significantly, it was not produced by the plaintiff in the list of documents filed along with the suit. He, however, admitted it on 21.2.2005. The sum and substance of these documents is that he

admits to ownership of the Satyawati Colony by Ex.D-1; the document also mentions about ownership of plot/property No.176, Harsh Vihar, which was registered in his name. The effect of clauses 2 and 3 of this document is that the defendant No.1 agreed to absolute ownership of the said property at Harsh Vihar by the plaintiff; in turn the latter agreed to pay Rs.1.75 lakhs to the defendant No.1. Clauses 5 and 6 of the said document are important. They state clearly that if other members of the plaintiff's family, i.e. his brothers and sisters have any right on title or interest in the said property, i.e. 176, Harsh Vihar, his father would give them their rights from his other property. Clause 6 unequivocally stated that after this (i.e. execution of the document Ex.D-1), the plaintiff's legal heirs etc. would not have any right to title or interest of any kind in the property. The original Hindi version of this clause reads as follows:-

"Iske paschat meri santititi aadi bhi parivarik sampati mai sai kisi bi prakar ka adhikar nahi mangenge."

25. Ex.D-2, a letter written much later by the plaintiff to his paternal aunt mentions about some inter se disputes between him and the defendant No.1. Apparently the said paternal aunt was trying to act as a mediator and bring about peace. The plaintiff, in that context, stated that he had nothing to do with the defendant No.1's self-acquired property since he has just retired one year before.

26. The plaintiff contends by placing reliance upon the reply filed to the application that the said letter Ex.D-1 is not relevant in any manner, whatsoever, in this case. According to him plot No.176, Harsh Vihar was his absolute property and the other defendants had no interest in it. The plaintiff further alleges that the defendant withheld the original documents in relation to that property and later extracted the letter dated 25.12.1988 (wrongly mentioned as 25.8.1988). It is also alleged that the defendant No.1 unlawfully got a sum of Rs.3,50,000/- extracted from the plaintiff by blackmailing him and subsequently release original documents of the property.

27. The decision in ***Uttam Singh Dugal's*** case (supra), is an authority on the proposition that admissions are to be construed in their terms. The plaintiff is undoubtedly right in contending that in the absence of an unambiguous admission, a decree under Order 12 Rule 6 CPC, cannot be made. The question that the Court has to address crucially, in such cases, is whether any and every kind of explanation given by a party, in relation to an admitted document, is to be construed as a plausible one. The background of the case, the nature of the admission and the overall framework of the pleadings within which such admission is made, would naturally have to be considered by the Court.

28. The case set up by the plaintiff is that he is entitled to a share in the property E-32, Satyawati Colony, Phase-III, Ashok Vihar, Delhi. While filing the suit, the plaintiff did not advert to the document Ex.D-1. When the same was filed and an application was made under Order 39 Rule 4 CPC namely IA 5688/2002, the plaintiff chose to make an evasive averment about its genuineness claiming it to be an “alleged document”. He, however, later conceded to its genuineness and admitted the document in 2005. The Court cannot, therefore, be unmindful of these overall circumstances. The document very clearly states that in lieu of the property at 176, Harsh Vihar, the plaintiff gave up all rights in relation to other family properties. The plaintiff is now asserting rights in relation to E-32, Satyawati Colony, Phase-III, Ashok Vihar, Delhi, claiming it to be a family property. In the light of the clear contents of Ex.D-1, the explanation about the document having been procured by force etc., in the opinion of this Court, is implausible. A careful reading of the plaintiff’s reply, according to his own version, shows that substantial amount was paid to the defendant No.1 at the material time. The explanation now sought to be given is, therefore, in any case, is not plausible.

29. As far as the arguments of the plaintiff that the document Ex.D-1 is contrary to the defendant’s case is concerned, three things

are immediately discernible. In the amended written statement, the defendants clearly aver that the plaintiff has suppressed all the material documents. The advertence here clearly is to Ex.D-1 which was later admitted by the plaintiff. Secondly, the plaintiff did not deny the document at the stage of admission and denial and thirdly, the reply of the plaintiff itself is unsupported by any affidavit. There is no dispute that the defendants are resisting the suit and stating that the plaintiff is disentitled to any decree for partition. In the circumstances it cannot be said that the reliance placed upon Ex.D-1, is inconsistent with their stand.

30. As far as the argument on behalf of the defendant No.5 is concerned, this Court is mindful of the correct position in law that in a partition suit, every family member is to be treated as a plaintiff and the suit has to ordinarily proceed to its logical conclusion. However, in this case, the sub-stratum of the plaintiff's case of entitlement of the partition is the existence of a right to claim such partition. Ex.D-1 clearly belies such a claim; the plaintiff cannot maintain the suit. Having walked out of the family, the plaintiff apparently being satisfied on the basis of the share received by him, he could not have approached this Court and claimed partition. Therefore, in such a case, where the suit for partition is not maintainable at the behest of one family member who is disentitled to approach the Court for such

relief, the proposition is that such a suit nevertheless be continued because of the insistence of the others, cannot be accepted.

31. In view of the above discussion, the Court is of the opinion that the suit is not maintainable in view of the admission in Ex.D-1; it is accordingly dismissed without any order as to cost.

32. CS(OS) 995/2002 and all pending applications are disposed of in the above terms.

S. RAVINDRA BHAT,J

AUGUST 28, 2008
'sn'