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

+ **FAO(OS) 350/2013**

ARVINDER KAUR & ORS

..... Appellants

Through : Mr.Bhagat Singh, Adv.

versus

SAHIB SINGH & ANR.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **02.08.2013**

The present appeal is directed against an order of 9th May, 2013 whereby the defendant/appellant's application under Order XII Rule 6 CPC for dismissal of the suit was rejected. The plaintiff – i.e. the respondent, in the present appeal – claims partition. The defendants had urged that the plaintiff had been given in adoption to his uncle. The plaintiff's contention, on the other hand, was that the adoption was no longer in existence since it had been cancelled. The plaintiff relied upon certain documents, including affidavits, one of which was

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filed during the pendency of the suit, and certain other proceedings, to contend that the plaintiff had unambiguously been adopted as the son of Jagbir Singh, second respondent. It was thus contended that the plaintiff could not maintain the suit for partition.

The learned Single Judge by the impugned order took note of the previous proceedings as well as the unsuccessful attempts of the defendants to have the suit rejected and thereafter observed that relief under Order XII Rule 6 in the peculiar facts and circumstances relief could not be granted.

"11. It has further been enquired from the counsel for the defendants no. 1 to 4/applicants that if the claim of the defendants no. 1 to 4/applicants is for dismissal on the basis of the aforesaid admission of documents, whether the right of the plaintiff to given explanation therefor can be shut out by dismissal of the suit.

12. No answer is forthcoming.

13. I am of the view that the admissions which are in the nature of evidence cannot invite disposal under Order 12 Rule 6 of the CPC inasmuch as decision cannot be on part of the evidence only and without giving opportunity to the parties to lead entire evidence.

14. There is thus no merit in the application which is dismissed."

Learned counsel for the defendants urged that the impugned order errs in law and relies upon previous unsuccessful attempts of

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the defendants/appellants, which have ultimately persuaded the learned Single Judge. It was contended that each of the documents, particularly the affidavits, unequivocally state that the plaintiff was the son of Jagbir Singh; if so, he could not have claimed partition of the suit properties which were originally owned by Sardar Amarjeet Singh.

This Court has carefully considered the submissions. The law pertaining to decree on admissions no doubt states that the approach of the Court should be to give effect to unambiguous admissions and curtail litigation whenever possible. However, the rulings are also clear that what appears to be an admission can often times be explained otherwise during the course of a full trial. This is precisely what had persuaded the learned Single Judge, as is evident from reading of para 11, to reject the application for decree of dismissal on admission.

This Court is of the opinion that no error is found with the impugned order since the plaintiff, being in carriage of proceedings, could have a possible explanation about the documents given the opportunity of trial. The Court further notices that vide order dated

9th May, 2013, parties have been released from the rigours of Section 52 of the Transfer of Property Act, 1882. The Court thereafter proceeded to in para 22, frame issues and set down the suit for trial.

In view of the above reasons and having regard to all particular circumstances, the Court is of the opinion that there is no infirmity in the impugned order. The appeal is accordingly rejected.


S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

AUGUST 02, 2013

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