

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.4076 of 2007.
Decided on:-06.01.2015.

Harmohan Singh.Petitioner.
Versus

Sukhdyal Singh Grewal and othersRespondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Arun Jain, Senior Advocate with
Mr. Sunil Sharma, Advocate for the petitioner.

Respondents No.1 and 2 ex-parte.

Mr. Rajbir Singh, Advocate for respondents No.3 and 4.

Dr. Bharat Bhushan Parsoon, J.

A suit for specific performance of agreement dated 12.9.1993 for possession of House No.322, Sector-9, Chandigarh is pending adjudication in the lower court since 7.11.2002. It was owned by Ran Singh Grewal, who died leaving behind alleged Will and five legal heirs including his widow Smt. Basant Kaur, who also died later. Sukhdyal Singh Grewal, defendant No.1, respondent No.1 herein, Manmohan Singh, defendant No.3, respondent No.3 herein, and Jagdev Singh Grewal, defendant No.4, respondent No.4 herein are sons of Ran Singh Grewal whereas Smt. Harminder Kaur Sidhu, defendant No.2, respondent No.2 herein, is his daughter.

2. Hearing has been provided to the counsel for the parties while going through the paper book.

3. The plaintiff, petitioner herein, moved an application under Order XII Rule 6 CPC seeking judgment in his favour on the basis of admission made by defendant-respondent No.1. This application was strongly contested and finding triable issues, the lower court vide order dated 28.4.2007 came to the conclusion that the judgment and decree to the extent of admission made by defendant No.1 in the given set of circumstances of highly disputed rival claims and triable issues, was not called for.

4. Impugning this order, counsel for the plaintiff-petitioner has urged that in view of provisions of Order XII Rule 6 CPC, the court has no option but to pass a judgment on admission made by defendant No.1. Assertion of this proposition by learned counsel for the petitioner is misfounded. It would be appropriate to reproduced Order XII Rule 6 CPC as under:

“(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-section (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.”

5. A careful perusal of this provision reveals there is no manner of doubt that it is not binding on the court to pass a decree on the admission made by a party in its pleadings. Rather, this provision is only an enabling one and, thus, vests discretion in the court to pass a judgment on admission and by no means can be said to be mandatory in its effect. Observations in this regard made by learned lower court in para 13 of the impugned order

with approval are reproduced as below:

“The provisions of Order XII Rule 6 CPC as reproduced above, provide for a judgment on admission, but not as a matter of right rather as a matter of discretion of the court. Where the defendants have raised objection which go to the very root of the case, it is not proper and justified to exercise this discretion. The words “May” and “Make such an order and” show that the power under the rule is discretionary and cannot be claimed as matter of right. This power is not to be exercised where the case involves question which cannot be conveniently tried on motion under this rule.”

6. There are many relevant issues and attending circumstances which rightly weighed with the lower court dissuading the court to pass a judgment on admission made by defendant No.1 in the written statement. Some of these points are enunciated as below:

- (1) Written statement furnished by defendant No.1 Sukhdyal Singh Grewal is not made by him personally but is through his alleged general power of attorney whose power to make such admission is strongly under contest by the other co-defendants;
- (2) Agreement dated 12.9.1993 sought to be enforced by the plaintiff was allegedly executed during the probate proceedings of Will of Dr. Ran Singh Grewal and there are other executants in addition to defendant No.1. At the time of execution of alleged agreement since the probate proceedings were pending, none of the executants, in fact, had any clear and transparent title therein. Rather, one executor of the Will had been appointed and he was acting as the overall incharge of the estate as representative of Dr. Ran Singh Grewal, testator at that stage;
- (3) Smt. Basant Kaur widow of the testator has already expired. Defendant No.2 Smt. Harminder Kaur Sidhu, yet another executant of the impugned agreement to sell is ex-parte in the proceedings. Sequelly, out of three executants, only one has admitted execution of the agreement whereas with regard to the other, the plaintiff is yet to prove execution of the agreement. As such, admission of one alone out of three executants could not have been made basis as a mandate for the court particularly

when LRs of Smt. Basant Kaur, another executant and widow of the testator, are strongly contesting the claim of the plaintiff; and,

- (4) Validity and legality of admission made in the written statement by defendant No.1 through his attorney is also under serious challenge on the ground that neither the right to admit claim of the plaintiff was with the attorney nor he could prejudice the right of other executant. It is also claimed that even attorney to the extent it had already been granted by defendant No.1, had been cancelled by him.

7. On understanding the entire gamut of circumstances, it is clear by now that the issue is not as simple as has been tried to be projected by the petitioner-plaintiff and sanctity and legality of admission made by defendant No.1 through his attorney is yet to be determined by the court when the parties are to lead their evidence. Some of the observations made by the lower court are very apt and are worthy of reproduction with strong approval. These are as under:

“It is yet to be established whether the executants were having any right in the property so as to pass a title in favour of the plaintiff under the agreement in question. With the help of evidence, it is to be established that they were competent to execute the agreement to sell and only then the right of the plaintiff will come into picture.”

8. There is yet another issue which has been very deftly discussed by the lower court. The property is joint Hindu family coparcenary property of the defendants and was being used as a dwelling house. Concedingly, no partition has been effected among the legal heirs. Suit for specific performance of the agreement was filed by the plaintiff. He also seeks possession which cannot be done without partition. Whether the property in dispute is legally subject to partition or not is yet another aspect which is to be determined by the court.

9. It is also to be noticed that the agreement to sell the house is of 12.9.1993. The suit was filed on 7.11.2002. It was filed after a period of

about nine years. Question of limitation is a mixed question of law and fact and thus, would require adjudication after the parties lead their evidence.

10. In *Cosmo Ferrites Limited Versus Universal Commercial Corporation and others 2006(2) Rent Control Reporter 11 (Delhi)*, interpretation of Order XII Rule 6 CPC has been made. As per this judgment, admission has to be unequivocal, clear and positive. As has already been discussed at length earlier, authority of the attorney who had filed the written statement containing alleged admission, even is under serious challenge on the plea that such admission could not have been made by him and further that even the said power of attorney had been cancelled. In view of the multiple circumstances needing adjudication explained earlier, the admission allegedly made by defendant No.1 cannot be said to be unequivocal, clear and positive.

11. Keeping in view the totality of facts and circumstances, when the matter is so complicated and multiple triable issues arise, while passing the impugned order, it was wise on the part of the lower court not to pass a decree under Order XII Rule 6 CPC on the basis of alleged admission of defendant No.1 in the written statement filed through his general power of attorney which is also claimed to have been cancelled.

12. Sequelly, no ground to interfere with the impugned order is made out. Affirming the same, this petition, being devoid of any merit, is dismissed.

January 06, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

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