

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4390 of 2013 [O&M]
Date of Decision : February 4th, 2015

Parkash Kaur Petitioner

Versus

Amandeep Singh and others Respondents

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

Present Mr. A.S.Gill, Advocate,
for the petitioner.

None for the respondent.

Dr. BHARAT BHUSHAN PARSOON, J.

Order dated 24.05.2013 [Annexure P/6], whereby decree was not passed by the trial Court on the written statement furnished by minor defendants, represented by their mother, Smt. Kulwinder Kaur, as natural guardian and next friend, under Order XII Rule 6 CPC, is challenged by the plaintiff, Smt. Parkash Kaur, petitioner herein.

2. No doubt, judgment on admission under Order XII Rule 6 CPC may be passed if admission is clear, categorical and certain. Reference may be made to the judgments in **Uttam Singh Dugal and Co. Ltd. Vs. United Bank of India 200 [4] RCR [Civil] 89**, and **Charanjit Lal Mehra and Ors. Vs. Smt. Kamal Saroj Mahajan and Anr. 2005 [2] RCR [Rent] 23**.

3. Merely because the defendants have admitted the plaintiff-petitioner to be entitled to 1/5th share in the property in dispute *ipso facto* would not result in passing of the decree in her favour, particularly when there are important collateral issues which need to be adjudicated.

4. It remains a fact that provision under Order XII Rule 6 CPC is an enabling one and is discretionary as also permissive. It is neither mandatory nor it is peremptory since the word “may” has been used. It is thus, clear that merely because admission from defendants has come in the written statement *ipso facto* would not result in passing of the decree because the Court has been given discretion and this provision is enabling one. There are many factors which need to be considered before acting upon provisions of Order XII Rule 6 CPC. Reference may be made to a decision of Hon`ble Supreme Court of India in **Karam Kapahi & Others Vs. M/s Lal Chand Public Charitable & Anr. 2010 [4] SCC 753.**

5. It is important to notice that [i]. a very strong objection with regard to the maintainability of the suit has been taken by the defendants; [ii] all the parties having ownership in the property in dispute have not been impleaded in the plaint; [iii]. defendants are minors and though are represented through their mother as a natural guardian and next friend, the Court is to be extra vigilant as such admission would result in divestiture of property rights of the said defendants; and [iv] the case has not been filed by the plaintiff but is filed through her power of attorney. The said power of attorney has neither been appended with the plaint nor has been brought on record.

6. Keeping in view the totality of facts and circumstances, the impugned order, dismissing the application under Order XII Rule 6 CPC of the plaintiff-petitioner does not suffer from any infirmity or legal error. Upholding the impugned order, this revision petition is dismissed.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

February 4th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?