

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.R.P. No.105/2015 & C.M. No.12721/2015**

Decided on : 2nd September, 2015

GULAB SINGH Petitioner

Through: Mr. Sanjay Jha, Advocate.

Versus

SATYENDER SINGH & ORS Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 10.3.2015 passed by the learned Additional District Judge, Central District whereby the application of the present petitioner/defendant No.1 in Suit No.60/2011 filed under Order XII Rule 6 CPC has been dismissed.
2. I have heard the learned counsel for the petitioner and have also gone through the impugned order as well as the record which has been filed along with the revision petition.

3. The contention of the learned counsel for the petitioner is that before filing of Suit No.60/2011, a suit bearing No.1099/1983 was filed by the present petitioner/defendant No.1 against *Hari Singh and Others* and the said suit was titled as *Gulab Singh vs. Hari Singh & Others*. It has been contended by him that in the said suit, there was an admission purported to have been made by the respondent/plaintiff of Suit No.60/2011 that the suit property No.456 was not partitioned whereas it was stated by both Hari Singh and Mam Kaur (the Plaintiffs of suit No.1099/1983) that the property was partitioned and therefore, on the basis of that admission, Suit No.60/2011 deserves to be dismissed. In order to support his submission, the learned counsel for the petitioner has relied upon Section 58 of the Evidence Act and also cited a judgment titled *Thimmappa Rai vs. Ramanna Rai & Others; (2007) 14 SCC 63* wherein it has been held that an admission made by a party to the suit in an earlier proceeding is admissible as against him.

4. I have carefully considered the submissions made by the learned counsel for the petitioner and have gone through the impugned order. The respondents herein, namely, *Satyender Singh & Others* filed suit No.60/2011 against *Gulab Singh & Others* for partition of suit property

bearing No.456, Wazirpur, Delhi, measuring 53.45 square yards. It was the case of the respondent/plaintiff that the aforesaid property was allotted to Mam Kaur, widow of Ram Chander, mother of the parties and on account of her death on 10.6.2004, the parties to the aforesaid suit had inherited the same. It was stated by the respondent/plaintiff that there are four shops and these shops deserve to be partitioned along with other property and for this purpose, a Local Commissioner be appointed so that a report regarding the partition of the property can be obtained. Rendition of account was also sought from the present petitioner/defendant No.1 and the other defendants, who are alleged to be in occupation of the suit property. Consequential relief of injunction was also prayed for.

5. The present petitioner/defendant No.1 contested the suit and filed his written statement. After filing of the written statement, he filed an application under Order XII Rule 6 CPC stating that in the earlier suit bearing No.1099/1983, which was filed by the present petitioner/defendant No.1, it had come on record that partial partition of the suit property was already done and therefore, it was urged that on the basis of the aforesaid admission purported to have been made by the

respondent/plaintiff, who was the defendant in the earlier suit, the present suit deserves to be dismissed. The trial court, after obtaining the reply, took the view that the suit which was pending final adjudication involved very complex factual matrix with regard to possession of various shops between the parties and consequently, it was observed that there is no unambiguous unequivocal admission on the basis of which it could be assumed that there was a complete partition of the suit property which would warrant dismissal of the suit.

6. After pursuing the record as well as the provision of law and in consensus with the view taken by the Ld. ADJ, one thing is very clear that there is no dispute about the fact that a decree in terms of Order XII Rule 6 CPC can be passed provided there is an admission either in the pleadings or otherwise by a party which has to be unequivocal and unambiguous only then it can be made as a basis for passing an order under Order XII Rule 6 CPC.

7. I have also considered the record and I feel that the objective analysis of the pleadings which were initiated on account of the earlier litigation between the parties or their predecessor-in-interest does not show any unequivocal unambiguous admission so as to warrant passing

of a decree in favour of the respondent/plaintiff or dismissal of the suit in favour of the present petitioner/defendant No.1. So far as Section 58 of the Evidence Act is concerned, no doubt it clearly lays down that a fact which may be admitted need not be proved. But the main point which is involved in the instant matter is whether at all there is an admission made by the respondent/plaintiff in the latter suit, which is attributable to the admission of the respondent/plaintiff made in the earlier litigation.

8. In the suit No.60/2011, the respondent/plaintiff has nowhere referred that partial partition had taken place between the respondent/plaintiff on one side and the present petitioner/defendant and his brothers on the other side. In the absence of certified copies of the pleadings having not been filed or even if filed but not having been put to admission and denial, one cannot assume an admission on the basis of earlier pleadings and attribute it to the respondent/plaintiff in the present case and thereafter pass a decree in favour of the petitioner/defendant no.1. To that extent, I feel that there is no infirmity, legally or otherwise, in the order dater 10.3.2015 passed by the learned Additional District Judge.

9. For these reasons, I feel that the present revision petition filed by the petitioner is totally misconceived and does not warrant any interference of this court. Accordingly, the same is dismissed.

10. Pending applications also stand disposed off.

V.K. SHALI, J.

SEPTEMBER 02, 2015

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