

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.274 of 2016**

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Pramod Narayan Thakur & Anr

.... Appellant/s

Versus

Most. Girija Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Madhukar Pandey

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

3 23-08-2016

Heard the learned counsel, Mr. Manojeshwar Prasad

Sinha for the petitioners.

Perused the impugned order dated 26.04.2016 passed by Sub Judge, Civil Judge(Sr. Div.), Shahpur Patory, District-Samastipur in Title Suit No.402 of 2014 whereby the plaintiff-petitioner's application under Order 12 Rule 6 C.P.C. praying for decreeing the petitioner's suit on admission has been rejected.

From perusal of the order impugned, it appears that the Court below considered the pleading of the plaintiff as well as the pleading of the defendant in the written statement and clearly recorded finding that the defendants have denied all the cases pleaded by the plaintiff. In fact, there is no admission as required under Order 12 Rule 6 C.P.C. and accordingly, has rejected the application.

The learned counsel for the petitioners relying on the



decision of the Supreme Court, (2005) 11 Supreme Court Cases 279 submitted that in view of the pleading of the parties even the Court has the jurisdiction to infer admission and pass judgment and decree on that basis. In the present case, the pleading of the defendant is that their ancestor have purchased 3 bighas of land including the suit property but in support of the same neither they produced any chit of paper nor any document in the Court below. Therefore, inference can very well be made that they have no title to the suit property and in fact, they have admitted indirectly the title of the plaintiff.

Order 12 Rule 6 reads as follows:

“6. Judgment on admissions-(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-rule (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.”

In view of this provision, the case of the plaintiff must be admitted by the defendant either in the pleading or otherwise orally or in writing but this admission must be clear and

unambiguous so as to authorize the Court to pass a judgment and decree on the basis of the admission.

So far the decision relied upon by the learned counsel for the petitioner is concerned, it may be mentioned here that in that case because of the facts and circumstances of that case, which was admitted by the parties, the Court found that it is a case of admission.

Here, in the present case, the Court below on the basis of the pleading clearly held that the defendant in the written statement denied the case of the plaintiff which has been filed by the plaintiff for declaration of title. Since the plaintiff has filed the suit for declaration of title, the onus is on the plaintiff to prove his case. The plaintiff cannot be allowed to take the advantage of weakness of the defendant's case in the garb of Order 12 Rule 6 C.P.C.

In view of the above facts and circumstances of the case, I find no reason to interfere with the impugned order and thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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