

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO. 4029 OF 2016

Ajay Ramesh Rawale & Ors.

... Petitioners

Versus

Sandhya Baswant Kurhade and Ors.

... Respondents

.....
Mr.S.S.Redekar for the Petitioners.

.....

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 3, 2017**

P.C. :

1. The record and the affidavit shows that all the respondents are served, however, none present for them. The petitioners are directed against the order dated 12th November 2014 passed by the learned Joint Civil Judge Junior Division, Malvan on admission. The petitioners are original defendant nos. 6, 7 and 9 in Regular Civil Suit No.99 of 2007 which was filed by present respondents for partition and separate possession. The parties had produced their respective documents and submitted their documents under Order XII Rule 6 of C.P.C.

2. Thereafter, defendant nos. 6,7 and 9 i.e. the present petitioners moved an application under Order XII Rule 6 of C.P.C. It was their contention that the parties have admitted their respective shares in

property nos. 1 to 3 which are listed in the plaint. There is no dispute in respect of the shares of the parties in the said property nos. 1 to 3. Therefore, they requested the learned trial Court to decide the shares of the defendants in respect of the said property nos. 1 to 3 and pass a decree accordingly. The said application under Order XII Rule 6 of C.P.C. was disputed by the original plaintiff and defendant nos. 1 to 4. After hearing the submissions of both the parties, the learned trial Judge rejected the said application and held that the parties are required to lead the evidence and the entire issue will be decided on merits.

3. The learned counsel for the petitioners has pointed out that three properties mentioned in the plaint, and so also the reply given by other defendants in Exhibits 103, 105 and 106 and also referred the statements wherein the other defendants have admitted the family tree and shares mentioned therein by the plaintiff in his plaint. He submitted that the plaintiff and defendant nos. 1 to 4 are siblings and defendant nos. 5 to 9 are siblings and the members of these two families are cousins and therefore, the property nos. 1 to 3 are to be divided between their fathers in two equal parts. Admittedly, in the suit properties mentioned at serial nos. 1 to 3, there is $\frac{1}{2}$ share of the plaintiff and defendant nos. 1 to 4 and other $\frac{1}{2}$ share is of defendant nos. 5 to 9. However, defendant no.5 is no more.

4. The learned counsel for the petitioners has submitted that under such circumstances, it was necessary for the trial Court to pass the decree on admission.

5. Perused the relevant documents, averments and considered the submissions of the learned counsel. The suit is for partition and separate possession. The said application Exhibit 204 was moved under Order XII Rule 6 of C.P.C. as the admission is given by the parties in respect of $\frac{1}{2}$ shares of the suit property nos. 1 to 3. However, it appears that the plaintiff and defendant nos. 1 to 4 want to give some explanation regarding their admission in respect of $\frac{1}{2}$ shares in the suit property nos. 1 to 3. The parties may tender some explanation pertaining to their admission and may qualify it, and therefore, under Order XII Rule 6 of C.P.C. it is not mandatory for the learned Judge to pass the decree on admission, but he may ask the parties to lead evidence and may not pass the decree on admission. Therefore, I am of the view that the order passed by the learned trial Judge need not be quashed and set aside. The learned trial Judge to endeavor to expedite the suit. The Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)