IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.5145 of 2003 (O&M)
Date of Decision: 09.08.2017

R.B.S. Chahal
......Petitioner

Vs

Chander Parkash Malhotra
....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. R.B.S. Chahal, petitioner-in-person.

Mr. A.K. Pathania, Advocate with
Mr. Chander Parkash Malhotra, petitioner-in-person.

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RAJ MOHAN SINGH, J.

[1]. The present revision petition has been preferred by the petitioner/defendant against the order dated 10.10.2003 passed by the Civil Judge (Jr. Divn.) Chandigarh vide which the application under Order 12 Rule 6 CPC filed by the petitioner was dismissed.

[2]. Learned counsel for the petitioner submitted the following legal submissions:-

(a). Provision under Order 12 Rule 6 CPC was resorted to by the defendant on the basis of admission of the plaintiffs recorded at different intervals of litigation which ultimately culminated in its logical end. The judgment can be passed on the basis of admission made by either of the party. Such a right can be claimed as a matter of legal right as the provision under Order 12 Rule 6 CPC is an enabling provision which is discretionary and permissive under the law. The object of Order 12 Rule 6 CPC is to enable a party to obtain speedy judgment and the application of the aforesaid Rule cannot be narrowed down. Under this Rule, either party may get rid of so much of the rival claims about which there is no controversy.

(b). Order 12 Rule 6 was amended by the Amendment Act of 1976. Prior to amendment of the Rule, the judgment could have been passed at admissions, if any party may, at any stage of a suit, where admissions of facts have been made, either on pleadings or otherwise, apply to the Court for such judgment or order as upon which such admission he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment, as the Court may think just.

(c). In the 54th Law Commission Report, an amendment was suggested to enable the Court to give a judgment not only on the application of a party, but on its own motion. The amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Court to use it *ex debito justitial*, i.e. debt of justice. Legal right in favour of the party filing application on the basis of admission was recognized, however the discretion is always with the Court to pronounce the judgment on such admission after exercising the discretion in a judicious manner. The provision of Order 12 Rule 6 CPC is wider than the provision of Order 12 Rule 1. The expression 'or otherwise' is wider enough to take into its fold the admission of fact either in pleadings or otherwise, whether orally or in writing. Keeping in view the width and scope of the provision, admission can be inferred from facts and circumstance of the case.

(d). The rule enables the Court not only to see the admissions made in the pleadings or under Rules 1 to 4 of the Order 12 CPC, but also the admissions made elsewhere during the trial. However, the provision is an enabling provision which is discretionary in nature and is permissive. The provision is neither mandatory, nor it is peremptory in view of use of word 'may' in the provision.

(e). The suit can be disposed of on the admitted facts. It can be disposed of on preliminary issues in terms of Order 14 Rule 1 CPC. There cannot be any doubt on the issues of *res judicata*, constructive *res judicata* and maintainability of the suit can be adjudicated upon as preliminary issues by the Court. When the facts are admitted, the Court should decide these issues as preliminary issues at the instance of the party concerned. However, no procedure is required to be followed by the High Court in order to appreciate such issues in wider perspective of the litigation. The object behind the Rule is to curtail vexatious litigation which constitutes an abuse of process of the Court. The finality attained in respect of a litigation should not be allowed to be raked up again and again under the garb of baseless grounds.

[3]. Learned counsel further submitted that in the instant case, the petitioner and respondent were involved in an endless litigation, which started with respect of House No.50 Sector 10-A Chandigarh. The house was owned by one Sh. J.C. Malhotra. After his death on 13.07.1973, house in question was devolved upon his eight heirs. Respondent Chander Parkash Malhotra was one of his sons, who was in possession of the house in question to the exclusion of other seven siblings/co-sharers. It was alleged that the efforts made by seven siblings/co-sharers to get the possession of the house was frustrated by the respondent-Chander Parkash Malhotra, who was in sole possession of the property. He was neither willing to pay the shares of seven siblings, nor wanted to give possession of their shares. It was also alleged that originally an agreement dated 24.07.1973 was entered into between all the eight siblings/co-sharers, wherein respondent-Chander Parkash Malhotra agreed to purchase shares of all other heirs by 31.12.1973 on payment of Rs.63,000/-.

[4]. As per the aforesaid, agreement, if the respondent failed to purchase the shares of other siblings/co-sharers, he would be liable to pay the rent @ Rs.250/- per month. Since the respondent defaulted on the aforesaid premise, the other heirs filed a petition for ejectment, which was dismissed on the ground that even though the other siblings/co-sharers were owners of 7/8th share, yet the respondent was in sole possession of the property and thus could not be evicted. During this period, the respondent filed a suit for specific performance of agreement to sell dated 24.07.1973, which was dismissed on the ground that respondent himself was not ready and willing to perform his part of obligation.

[5]. Thereafter, siblings/co-sharers filed Civil Suit No.78 of 1982 for possession by way of partition. In the said suit, the trial Court passed a preliminary decree declaring the respective shares of the heirs and also found that the respondent was liable to pay the rent w.e.f. 14.07.1973. The appeal filed against the preliminary decree was dismissed. On 14/15.6.1993 the other siblings sold their 7/8th share in House No.50 Sector 10, Chandigarh vide registered sale deed in favour of the petitioner. At that time RSA No.2666 of 1984 filed by the respondent against the preliminary decree passed in Civil Suit No.78 of 1982 was pending before this Court. The petitioners filed an

application for substitution as respondents in the aforesaid appeal. The Court vide order dated 01.12.1993 allowed substitution of the petitioners as respondents and dismissed the appeal. Relevant part of the order is reproduced hereasunder:-

> "*A reading of the order of the Supreme Court makes it abundantly clear that for making additions and renovations, permission of the Chandigarh Administration, according to law, was required to be obtained. Chander Parkash, of course, was not prepared to help his brothers and sisters because he alone was in possession and was not willing to proceed any further for division of the building. Every move of the theirs was frustrated by Chander Parkash. Finding no alternative, they sold the property to Shri R.B.S. Chahal and Mrs. Sukhraj Chahal who, having now stepped into the shoes of the respondents, are entitled to be impleaded in their place and thus they are ordered to be impleaded as such and Civil Misc. No.2496-C-1993 is thus allowed.*
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> *On one or two dates of hearing, counsel for the appellant was present but he fairly stated that the appellant is not interested in pursuing with the matter. I can understand why he was not interested because he is in possession of the building. Almost 20 years have gone since litigation started between the parties, yet it has not come to an end. The added respondents being strangers to Chander Parkash cannot possibly live with him in one and the same building. In this situation, it becomes necessary to give some direction to the trial Court so that it may proceed to pass final decree and bring the litigation between the parties to an end.*

As already noticed above, property cannot be partitioned according to bye-laws. The only alternative left is that the parties be permitted to bid among themselves and whosoever gives the highest bid, be allowed to purchase the property. In case this mode is not acceptable, the trial Court should determine the market value and give option to the appellant to purchase the share of the added respondents. In case he fails to do so within the time, that the trial Court may allow for the purpose, the added respondents be allowed to pay the price of the share of Chander Parkash appellant.

With the aforesaid direction, this regular second appeal is dismissed with no order as to costs. Since the appellant or his counsel is not present, respondents are directed to appear before the trial Court on 20.12.1993 on which date the trial Court shall issue notice for appearance of the appellant and thereafter trial Court shall proceed with passing of the final decree in the terms indicated above.

December 1, 1993 *Sd/- V.K. JHANJI*
JUDGE"

[6]. Apparently, the application filed by the petitioner(s) was allowed and RSA No.2666 of 1994 was dismissed. Learned counsel for the appellant and appellant were not present as the learned counsel on earlier two dates had stated that the appellant was not interested in pursuing the matter, despite the fact that he was in continuos possession of the house in question. This Court directed the respondents to appear before the trial Court in the context of further proceedings towards

passing of the final decree. The market value of the house was to be determined and first option to purchase shares of the applicants was to be given to the respondent at the rate so determined. In the event of failure on the part of the respondents to purchase 7/8th share of the siblings/co-sharers, then the applicants/petitioner(s) have a right to purchase the share of the respondents.

[7]. Thereafter respondents filed an application dated 04.01.1994 before the trial Court, acknowledging the sale deeds in favour of the petitioners and determination of the market value for the purposes of exercising his first option to purchase the shares of the petitioners, who were substituted in place of siblings/co-sharers. On 22.03.1995, the trial Court passed the final decree and assessed the market value of the house to be Rs.20 lacs. 7/8th share of the petitioners was assessed to be Rs.17.5 lacs and 1/8th share of the respondent was evaluated to be Rs.2.5 lacs. Respondent was given first option to purchase 7/8th share of the petitioners on 08.06.1995. As per the directions given by this Court in RSA No.2666 of 1984, respondent was directed to deposit the amount in the Court in compliance of the aforesaid order by 29.07.1995. On 26.04.1996, the trial Court directed the respondent to receive a sum of Rs.2.5 lacs deposited in the Court by the petitioner while

exercising their option to purchase 1/8th share of the respondent.

[8]. A Civil Appeal No.77 of 1995 was filed by the respondent on 30.04.1996 against the final decree drawn in pursuance of decision of RSA No.2666 of 1984. The appeal was dismissed by the lower Appellate Court holding that the factum of sale by co-sharers/siblings in favour of present petitioners could not be faulted with even in the application filed by the respondent under Order 39 Rules 1 and 2 CPC. The sale deed executed in favour of the petitioners were endorsed to be valid. The petitioners were entitled to have possession of the premises in due course of law.

[9]. Against the dismissal of the appeal by the lower Appellate Court, RSA No.1330 of 1996 was preferred by the respondent. The same was dismissed on 07.02.1997 by this Court, holding that the respondent was given first option to purchase the share of the petitioners (i.e. original 7/8th of sibling/co-sharer). The sale deeds were challenged in the grounds of appeal. While dismissing the aforesaid appeal on 07.02.1997, this Court concluded in the following manner:-

> *"...............Resultantly, it can safely be said that the value of the property in dispute today is much higher than what it was in March 1995. In this situation, it is not*

surprising that the respondents has willingly deposited an amount of Rs.2½ lacs in the executing Court as the price of the 1/8th share of the appellant. Still further, keeping in view the stubborn and adamant attitude of the appellant and in order to put an end to the litigation, Mr. Tewari has very fairly though reluctantly stated that the value of the property is not less than Rs.60 lacs and that the respondents are willing to deposit the value of 1/8th share viz. Rs.7½ lacs for payment to the appellant. Mr. Tewari states that an amount of Rs.2½ lacs having already been deposited by them in the executing court, they can deposit the remaining amount of Rs.5 lacs within such time as the court may fix. Mr. Mittal has again spoken to the appellant. He states that he is not willing to buy at this price. The result is that the appellant shall neither part with the property nor with the money.

After hearing counsel for the parties at considerable length and on examination of the evidence on record, it is clear that the valuation as fixed by the court in the year 1995 was not at all excessive. If at all, the court had taken a conservative view and fixed the value at a level lower than the actual. It is further clear that the respondents who have purchased and are owners of 7/8th share of the property are being continuously denied its use and occupation. The appellant who has only 1/8th share in the property continues to remain in possession. Still further, the appellant is not willing to either buy or sell at today's price. Even otherwise, the appellant had not produced any evidence to show that he was possessor of the means to pay the price even at the value as assessed by the court in March 1995. In view of this situation, there is no equity or justice in favour of the appellant. It appears that he is only *trying to take undue advantage of the fact that the trial court had not specifically mentioned that the appellant had the option to purchase or sell the property within a specified time. It may also be noticed that vide order dated June 8, 1995, the executing court had called upon the appellant to make the deposit on July 29, 1995. In spite of the grant of time of more than six weeks, the appellant had not made the deposit. This fact further shows that the effort was only to delay and not to have the matter decided.*

Taking the totality of circumstances into consideration, no ground for interference in the appeal is made out. It is, accordingly, dismissed. It is a case for the award of compensatory costs especially because the appellant has kept the respondents out of possession of the premises even though they own 7/8th share. However, token costs of Rs.10,000/- are awarded to the respondents.

February 7, 1997 Sd/- JAWAHAR LAL GUPTA
JUDGE"

[10]. A review application was filed in the aforesaid RSA No.1330 of 1996, however the same was dismissed on 12.03.1997. It was held that the grounds as mentioned in the review application though indicated in the grounds of appeal, but were never pressed. SLP No.8048-49 of 1997 was filed by the respondent against the judgment dated 07.02.1997 passed in RSA No.1330 of 1996 and against the order dated 12.03.1997 passed in the review application No.17-C of 1997.

[11]. Thereafter CR No.2028 of 1996 was preferred by the

respondent against the order dated 26.04.1996. The said revision petition was dismissed vide order dated 14.01.1998 with costs. The said order was upheld upto the Hon'ble Apex Court.

[12]. While deciding RSA No.2666 of 1984, it was noticed by this Court that in the proceedings of final decree, the trial Court appointed Local Commissioner to determine as to whether property can be partitioned and to suggest mode of partition. Local Commissioner was directed to look into the account and determine the amount payable by the respondent. In the report dated 07.02.1989, the Local Commissioner opined that in the presence of bye-laws under the Capital of Punjab (Development & Regulation) Act, 1952, the property cannot be partitioned by metes and bounds and should be sold and the money so realised be divided amongst the co-sharers according to their shares. An amount of Rs.1,28,000/- was found due from the respondent to his brothers and sisters upto 31.01.1987. The objections filed by the respondent were dismissed by the trial Court against which review petition was filed, which was also dismissed on 31.07.1989.

[13]. CR No.3266 of 1989 was filed against the order dismissing the objection petition as well as review application. Vide order dated 22.02.1991, the revision petition was allowed

by this Court and Rule 14 of the Rules *ibid* were declared to be *ultra vires*. The report of the Local Commissioner was set aside and the report submitted by the Architect appointed during pendency of the revision petition was accepted. The plot was valued at Rs.10,79,650/-. Architect also gave his opinion that the property can be partitioned in five independent apartments of 900 sq. ft. each. In view of report of the Architect, it was observed that the respondent was ordered to be adjusted on the ground floor and other four portions were to be given by way of draw of lots to four co-sharers and the remaining co-sharers were to get the amount from the aforesaid co-sharers including the respondent, who was ordered to be adjusted on the ground floor. The judgment was silent with regard to the person, who would apply for construction or obtain sanction of the plan, mode in which the same was to be applied and construction was to be made. Since Rule 14 of *ibid* Rules was declared to be *ultra vires*, an SLP was preferred by the Union Territory, Chandigarh against the said order. Brothers and sisters of the respondent also assailed the same. Issue was determined by the Hon'ble Apex Court in Civil Appeals Nos.4974 and 2305 of 1992 in the following manner:-

> *"Leave granted.*
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> *In the present case, the respondents did not want*

the partitioning of the plot by metes and bounds. All that they wanted was the partitioning of the building and additions and alterations therein to make separate living units in the same building. Even this partition as well as addition was to be done by them with the approval of the Chandigarh Administration according to its building bye-laws. Since no fragmentation of any site including the building was involved, there was no question of the violation of rule 14 of the Chandigarh administration (Sale of Sites and Buildings) Rules 1960.

In the circumstances, it was not necessary to declare rule 14 invalid as the High Court has done. To that extent, we set aside the order of the High Court.

It is made clear that the respondents before partitioning the building or making additions and renovations in the same will take permission of the Chandigarh Administration according to law. The appeal is disposed of accordingly. There shall be no order as to costs.

In view of our order in Civil Appeal No.4974 of 1992 arising out of S.L.P. (Civil) No.10739 of 1991, this special leave petition is disposed of in terms of the said order."

[14]. In the execution application No.20 of 1996, the objections filed by the respondent were rejected. Civil Revision No.3165 of 1998 was preferred by the respondent before this Court. This Court after noticing the background of the case, held in the following manner:-

"Thus all the contentions raised by the petitioner

have been fully answered by this Court in the previous litigation inter parties. Therefore, it is not open to the petitioner to raise the same contentions again and again. The petitioner, who is only entitled to 1/8th share in the suit property is continuing in possession of the suit property for the last more than 20 years. Having lost in appeals and in the revisions filed, the petitioner is raising the same very contentions again and again to delay and drag on the proceedings in the trial Court. I am, therefore, of the opinion that there are no merits in these two civil revisions in view of the orders and judgments rendered by this Court, referred to above. The petitioners are bound by these orders and judgments of this Court since they have reached finality.

The contention that the decree had been obtained by playing fraud cannot be raised in the execution proceedings. The petitioner has not raised this contention in the earlier proceedings. It is only an afterthought. Further, the petitioner has not filed the decree-holders either on him or on the Court. I am of the opinion that it is not open to the petitioner to raise this contention at this belated stage. The petitioner is also barred to raise this contention on the basis of principles of constructive res judicata. This contention, therefore, fails.

The learned counsel for the petitioner further contended that the decree is a nullity and, therefore, it cannot be executed. There is no dispute of the fact that the Court has jurisdiction to entertain the suit. When the Court has inherent lack of jurisdiction then only it can be said that the decree is a nullity. Reliance may be placed on the decision of the Apex Court in Kishan Singh vs. Chaman

Paswan. A.I.R. 1954 S.C. 340. In this case when admittedly the trial Court has jurisdiction to try the suit, it cannot be said that the decree passed by it is a nullity. This contention also fails.

I do not, therefore, find any grounds warranting interference with the order of the Executing Court. The Revision Petitions Nos.3165 and 3166 of 1998 are, therefore, dismissed with costs assessed at Rs.5000/-.

October 15, 1998
IBS *Sd/- T.H.B. Chalapathi*
Judge"

[15]. The perusal of the impugned order dated 10.10.2003 shows that the trial Court despite taking notice of the past history of the litigation between the parties, has dismissed the application on the ground, firstly that the respondent has not admitted the validity of the sale deed in RSA No.2666 of 1984. Secondly that the grounds of RSA No.1330 of 1996 in which sale deeds were under challenge were not placed before the Court for perusal and, therefore, bald assertion in the said context was not sufficient. Thirdly, that the order passed by this Court in RSA No.1330 of 1996 and that of the Hon'ble Apex Court in SLP No.8048-49 of 1997 were not produced before the Court to indicate any admission made by the respondent in respect of the sale deeds. Fourthly, that the applicants have argued that the respondents have admitted the legality of the sale deeds, respondent has challenged the judgment dated

26.04.1996 vide which the petitioners were declared to be complete owners of the property.

[16]. It was noticed that in view of the challenge made by the respondent, the admission regarding legality of the sale deeds would not be inferred. It has also been noticed that merely because in RSA No.2666 of 1984, first option was given to the respondent to purchase the shares of other siblings/co-sharers and while passing the final decree, it was opined by the Court that after auctioning the disputed house, the money should be divided amongst the co-sharers. By doing so, it could not be presumed that the respondent has accepted the legality of the impugned sale deeds. Lastly, the Court opined that there was no document on record to show any such admission on the part of the respondent. Learned counsel for the respondent in addition to the aforesaid grounds stated that since issues have already been framed, therefore, parties are at issues and Order 12 Rule 6 CPC does not apply.

[17]. During course of proceedings at different stages of litigation that execution of sale deeds in favour of petitioners was a conceded position. Chander Parkash even sought the option to purchase the shares of the siblings. The heading of application dated 04.01.1994 was unambiguous. The present suit was filed more than two years after the aforesaid application

dated 04.01.1994. During this period the Court continued with the proceedings. The factum of sale deeds by siblings in favour of petitioners were not found to be wrong as they were bound by the result of litigation in terms of Section 52 of the Transfer of Property Act. The sale deeds were even commented upon in the proceedings under Order 39 Rules 1 and 2 CPC in the present suit dated 04.04.1996, when the application was dismissed on 25.07.1996. The sale deeds were also assailed in RSA No.1330 of 1996, which was dismissed. Grounds No.VIII and IX were specifically taken in respect of validity of sale deeds. Sub para 5 (d) also enumerated the legal point on which challenge was made to the sale deeds. High Court dismissed the appeal vide judgment and decree dated 07.02.1997. Review application was also dismissed on 12.03.1997. Learned counsel for the review applicant did not argue qua the validity of sale deeds and it was so recorded in the order of RA No.17-C of 1987 in RSA No.1330 of 1996. Even SLP was also dismissed by the Hon'ble Supreme Court. Trial Court vide judgment and decree dated 26.04.1996 declared the petitioners to be owners. CR No.2020 of 1996 against the said order was dismissed by the High Court on 14.01.1998. Further review and SLPs also did not show any change in the factual matrix. Even during execution, validity of sale deeds did not shatter even upto the stage of SLP.

[18]. The trial Court would take notice of the aforesaid facts to arrive at a positive conclusion. Whether these details are sufficient to infer admission of facts so as to attract applicability of provision in terms of Order 12 Rule 6 CPC. The trial Court would also take into consideration whether the facts on record would be sufficient to infer the same to be proved/admitted facts for the purpose of discouraging the litigation perseverance in terms of Order 12 Rule 6 CPC, Section 11 and Order 14 Rule 1 CPC. Perusal of the impugned order reveals that though the Court has noticed the litigation pending between the parties at different stages with reference to nature of orders passed, but still the trial Court wanted to have the documents on record. In my considered opinion, the trial Court was under legal obligation to appreciate the stage and nature of proceeding in order to decide the application under Order 12 Rule 6 CPC, finally by giving due notice to the proceedings between the parties at different stages and before different hierarchy of Courts. The trial Court ought to have decided the scope and nature of admissions (if any) with reference to the nature of past litigation between the parties and the judicial interference required on the basis of legal position after amendment by the Amendment Act of 1976. The decision of the application at this stage would be more or less akin to the provisions of Order 14 Rules 1 and 2

CPC. The trial Court ought to have appreciated the fact that the admission, if found and proved to be existed on record, would entail in dismissal of the suit itself.

[19]. The execution of sale deeds whether would give arise any ground to decide the present suit under Order 12 Rule 6 CPC, particularly in view of the fact that the sale deeds have been assailed on the basis of fraud, is the controversy, on which the trial Court can be called upon to take notice of the issue by revisiting the earlier order. In view of facts on record, in my considered opinion impugned order needs to be revisited by the trial Court with reference to the past litigation between the parties. Consequently, the impugned order is set aside. The case is remitted back to the trial Court to pass a fresh order in the application under Order 12 Rule 6 CPC after taking note of the material on record in accordance with law. The Court shall not be influenced by any observation of this Court while recording factual matrix of the case.

[20]. Since past litigation at different stages is an admitted position between the parties, the trial Court would be at liberty to call upon both the parties to bring on record relevant material at this stage to enable the trial Court to arrive at lawful decision in the context of application under Order 12 Rule 6 CPC. The trial Court shall make every endeavour to decide the application

afresh on merits at the earliest. Both the parties are directed to appear before the trial Court on 31.08.2017.

[21]. Nothing expressed hereinabove would be considered to be an expression of any opinion on merits of the case in any manner as the aforesaid facts have been noted only for the sake of disposal of the present petition.

August 09, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No