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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 338/2017 & CM No.12395/2017

NARESH GUPTA & ANR

..... Appellants

Through : Mr. Karunesh Tandon, Advocate

versus

RAJESH KUMAR MEHLAWAT & ANR

..... Respondents

Through : None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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29.03.2017

1. The appellants/plaintiffs are aggrieved by the order dated 8.11.2016, passed by the learned trial court allowing an application filed by the respondents/defendants under Order XII Rule 6 CPC and passing a judgment, dismissing their suit for partition in respect of property bearing No.RZ-98/J, forming part of Khasra No.69/8/2, situated in the revenue estate of Village Palam Colony, commonly known as Raj Nagar, New Delhi.

2. Before considering the submissions of the learned counsel for the appellants, a brief glance at the relevant facts of the case is considered necessary. The appellants No.1 and 2 (husband and wife) had instituted a suit for partition against the respondents No.1 and 2 (husband and wife). The case set up by the appellants in the suit/plaint is that the appellant No.1 and the respondent No.1 and their respective wives, i.e., appellant No.2 and the respondent No.2 were good friends. On 02.11.2005, the appellant No.1 had purchased a parcel of land measuring 90 sq. yards situated at Village Palam

Colony through a registered sale deed. On the very same day, the respondent No.1 had also purchased an adjacent plot measuring 90 sq. yards through a registered sale deed.

3. After purchasing the said plots, the appellant No.1 and the respondent No.1 had joined the same and raised a construction thereon comprising of a basement and ground floor. Later on, the wives of the appellant No.1 and the respondent No.1, namely, appellant No.2 and the respondent No.2 had jointly purchased a plot measuring 80 sq. yards adjacent to the captioned plots through a registered sale deed dated 9.6.2006. The parties had agreed to merge the above plot with the two plots measuring 90 sq. yards each purchased earlier by the appellant No.1 and respondent No.1 and they raised a construction on the entire plot measuring 260 sq. yards, consisting of a basement, ground floor, first floor and second floor.

4. It is the version of the appellants that after merging and undertaking construction upon the said plots, the appellants and the respondents divided the same amongst them and started carrying on business from the said premises. The appellants are in possession of the ground floor and second floor and the respondents are in possession of the basement, first floor and the roof above the second floor. After some time, the relationship between the parties had soured and they separated their business in July, 2012. Claiming that the respondents were harassing them over the years, the appellants instituted the present suit in the High Court in the year 2014, seeking partition of the suit premises by metes and bounds.

5. After being served with the summons in the suit, the respondents filed their written statement taking several preliminary objections. One of the preliminary objections raised was that the suit is liable to be dismissed under

Order XII Rule 6 CPC in view of the Agreement dated 8.7.2012, executed between the parties, which had partitioned the suit premises whereafter the parties were carrying on their business from their respective portions. In the alternative, the respondents had prayed for rejection of the plaint under Order VII Rule 11 CPC on the ground that the suit is devoid of any cause of action. The respondents pleaded that the appellants had not challenged or sought cancellation of the Agreement/partition deed dated 8.7.2012, which was duly signed by the appellant No.1 and the respondent No.1 and was witnessed by the brothers of both the parties. In their replication, the appellants did not deny the factum of execution of the document dated 8.7.2012 by the appellant No.1 and the respondent No.1, but sought to explain that the said document had only recorded an arrangement to reside in and use the suit premises and asserted that it could not be treated as a partition of the suit premises since the same had not been signed by all the parties to the suit.

6. After the pleadings were completed in the suit, following issues were framed on 3.9.2015:-

- “1. Whether the plaintiffs are entitled for a decree of partition for the suit property? OPP*
- 2. Whether the suit property was already partitioned by way of agreement dated 8th July, 2012? OPD*
- 3. Whether the suit is maintainable in view of agreement dated 8th July, 2012? OPP*
- 4. Whether the parties have acted upon the agreement dated 8th July, 2012? OPP/OPD”*
- 5. Whether the suit is without any cause of action? OPD*
- 6. Whether the site plan filed by the plaintiffs is forged and fabricated document and not as per the site? OPP*

7. *Whether the suit is properly valued and proper Court fee has been paid? OPD*
8. *Relief.*

Subsequently, due to the enhancement of the pecuniary jurisdiction of the High Court, the suit was transferred to the trial court for further proceedings.

7. In September, 2016, the respondents filed an application under Order XII Rule 6 CPC stating *inter alia* that the appellants had concealed the material fact of execution of the hand written Agreement/mutual partition deed dated 8.7.2012 in their plaint, but in their replication, they did not deny execution of the said document. A specific reference was made by the respondents to the averments made by the appellants in para 5 of the plaint wherein, it was stated as under :

“5. That the plaintiffs and defendants also merged the above said plot of 80 sq. yds. with the plots / property purchased earlier and constructed the entire plot of 260 sq. yds. consisting of basement, ground floor, first floor and second floor. After merging and constructing the said plots, the plaintiffs and defendants divided the same among them and started carrying business from the said property. At present the plaintiffs are in possession of ground and second floor whereas the defendants are in possession of basement, first floor and the roof. The entire plot of 260 sq. yds. now bears the municipal bearing no. RZ-98/J, part of Khasra No.69/8/2, situated in the revenue estate of village Palam, colony known as Raj Nagar, New Delhi-110045 hereinafter called the suit property. The site plan of the basement ground floor, first floor and second floor is annexed as ANNEXURE-C. (colly)”

8. Respondents/defendants pleaded that the appellants had admitted to the execution of the Agreement dated 8.7.2012 and had also admitted to

have acted upon the said document, following which there was a division of the property by metes and bounds between the appellants and the respondents, who were carrying on their separate businesses from their respective portions/ floors of the suit premises. Relying on the said admissions made by the appellants and the factum of execution of the Agreement dated 8.7.2012, the respondents prayed for a judgment seeking dismissal of the suit instituted by the appellants, by invoking the provision of Order XII Rule 6 CPC. In reply to the said application, the appellants reiterated the averments made by them in the replication and asserted that the document dated 8.7.2012, was simply an arrangement to live in and use the suit premises, but it could not be treated as a partition deed and that it had not been signed by all the parties, who are the owners of the suit premises.

9. After hearing the counsels for the parties, the learned trial court passed the impugned order allowing the application filed by the respondents under Order XII Rule 6 CPC and dismissing the suit holding inter alia that the appellants had made categorical and unequivocal admissions in the plaint to the effect that the parties were already in possession and enjoyment of their respective shares in the suit premises in terms of the Agreement dated 8.7.2012. Aggrieved by the said decision, the appellants have filed the present appeal.

10. Learned counsel for the appellants submits that the impugned judgment is perverse inasmuch as there is no evidence on the record to establish that all the owners of the suit premises had acted upon the terms and conditions recorded in the document dated 8.7.2012 and this aspect required a regular trial without which, no findings could have been returned

by the trial court. He argues that for applying the provision of Order XII Rule 6 CPC, an absolute admission is required, which is missing in the present case. It is contended that the appellant No.2 and the respondent No.2 were not even signatories to the Agreement dated 8.7.2012 and therefore, it could not have been assumed that they had given their consent thereto merely because it was executed by their respective husbands, namely, appellant No.1 and the respondent No.1. It is further stated that a specific issue was framed as to whether the suit premises stood partitioned by way of the Agreement dated 8.7.2012 and the said issue required evidence before any finding could have been returned thereon.

11. This Court has carefully examined the pleadings in the suit and the application filed by the respondents under Order XII Rule 6 CPC and perused the Agreement dated 8.7.2012 written in long hand and placed on record.

12. It may be noted at the outset that at the time of deciding an application under Order XII Rule 6 CPC, the court is only required to go through the pleadings/documents on record. It is also undisputed that a judgment on admission is not a matter of right, but a matter of discretion of the court (**Ref.: Raj Kumar Chawla vs. Lucas Indian Services, AIR 2006 Delhi 266, Himani Alloys Ltd. vs. Tata Steel Ltd., (2011) 15 SCC 273 and Gurdwara Sahib vs. Gram Panchayat Village Sirthala & Anr., (2014) 1 SCC 669).**

13. The underlying object of Order XII Rule 6 CPC, which has been exhaustively discussed in several judicial pronouncements, is that once categorical admissions are made by a party, then the litigation should not be permitted to keep on lingering and in appropriate cases, the court ought to exercise its discretion under the said provision and nip such a litigation in

the bud by passing orders to ensure that the judicial process is not abused and a person is granted relief without any delay and without making him go through the rigorous of a trial. (Ref.: T. Arivandandam vs. T.V. Satyapal and Anr., reported as **(1977) 4 SCC 467**, Charanjit Lal Mehra and Ors. vs. Smt. Kamal Saroj Mahajan and Anr., **(2005) 11 SCC 279**, Vijaya Myne vs. Satya Bhushan Kaura, **142 (2007) DLT 483**, Shri Vimal Khanna vs. Shri Kishan Chand Khanna, **DRJ 116 (2010) 251** and P.P.A. Impex Pvt. Ltd. vs. Mangal Sain Mittal, reported as **166 (2010) DLT 84**).

14. The scope and ambit of Order XII Rule 6 CPC was discussed by the Supreme Court in the case of Uttam Singh Dugal & Co. Ltd. vs. Union Bank of India & Ors., reported as **(2000) 7 SCC 120**, where it was held that admissions can be those with reference to the pleadings in an application under Order XII Rule 6 CPC and such pleadings would also fall within the parameters of the expression “pleadings or otherwise”, used in the provision. In the case of Rajiv Srivastava vs. Sanjiv Tuli and Anr. reported as **AIR 2005 Delhi 319**, the Supreme Court had interpreted the expression 'otherwise' used in Order XII Rule 6 CPC and held that it permits the court to pass a judgment on the basis of the statement made by the parties not only on the pleadings but also in any document or a statement recorded in the Court.

15. It is also profitable to refer to the observations made by a Division Bench of this Court in the case of Delhi Jal Board vs. Surendra P. Malik reported as **104 (2003) DLT 151**, that irrespective of the stage of the proceedings at which a judgment is sought or whether admission of facts are found expressly in the pleadings or not, if such admissions can be gathered even constructively for the purpose of rendering a speedy judgment, an

application under Order XII Rule 6 CPC can be allowed.

16. In the instant case, the first thing that emerges is that at the time of instituting the suit, the appellants had withheld material information from the court that the parties had executed an Agreement dated 8.7.2012 in respect of the suit premises. It is considered apposite to reproduce the said hand written document, which records as under :-

“It has been agreed b/w Rajesh Mehlawat & Naresh Gupta that they have agreed to do their business separately from 08th of July 2012. The whole property of 260 sq. yds, has been divided b/w the two floor wise. Naresh Gupta will have the ownership of Ground floor + II floor and Rajesh will have ownership of Basement + 1st Floor + Top Floor (Roof) with whole rights. It has been decided that Rajesh will give diff. of Rs.7 (seven) Lakh to Naresh Gupta against property division.

It has also been decided that Rajesh will keep whole stock of Yashveer and Naresh will keep the whole stock of Beson (10X13) & Krishna (Italino), that the remaining stock will be divided b/w the two.

Naresh Gupta has agreed to take car (Swift Dezire) at the amount of Rs.3,40,000/-.

Sd/-

Rajesh Kumar

Sd/-

Naresh Gupta

Witnesses:

- 1. Sd/-*
- 2. Sd/-*
- 3. Sd/-*
- 4. Sd/- ”*

17. The aforesaid Agreement dated 8.7.2012 has been signed by the appellant No.1 and the respondent No.1 and witnessed by four parties, out of whom one is the brother of the appellant No. 1 and the other is the brother of the respondent No.1. On a glance at the said document, it is clear that the parties had agreed to divide the suit premises on a floor-wise basis. The ground floor and the second floor had fallen to the share of the appellants and the basement, first floor and the terrace above the second floor had come to the share of the respondents. Further, having regard to the fact that the respondent No.1 was given the terrace rights in the suit premises, he had agreed to compensate the appellant No.1 by paying him the difference, quantified at Rs.7.00 lacs. The said document also records the partition of the business being conducted jointly by the parties and refers to the manner of dividing the stock and a vehicle, which fell in the share of the respondent No.1.

18. The appellants did not make a mention of the Agreement dated 8.7.2012 in the plaint. Nor did they file the said document. It was only when the respondents referred to the execution of the said Agreement in their written statement and asserted that the suit instituted by the appellants is devoid of cause of action as the suit premises stood already partitioned between the parties, who were residing and carrying on their business in terms of their respective shares, that the appellants were compelled to admit to the execution of the document.

19. In their replication, the appellants sought to explain that the Agreement had simply recorded an arrangement to reside in and use the suit premises and urged that it could not be treated as a partition deed since it had not been signed by all the parties who were owners of parts of the suit

premises. They refuted the plea of the respondents that they had not taken any steps to challenge or seek cancellation of the Agreement dated 8.7.2012, by stating that there was no requirement for seeking cancellation of the said document as it was not a partition deed, but simply an arrangement.

20. It is also relevant to note that at no stage did the appellants deny that they were not in occupation of those portions of the suit premises that fell to their share as recorded in the Agreement dated 8.7.2012, namely, the ground floor and the second floor, nor did they deny the fact that they had received a sum of Rs.7.00 lacs from the respondent No.1 for compensating them for the terrace right that had fallen to the share of the respondents, apart from the basement and the first floor of the suit premises.

21. In fact, the averments made by the appellants in the plaint in particular para 5 thereof, substantiate the submissions made by the respondents that they had purchased three parcels of land; that the parties had merged the said plots and raised a construction on the entire plot of land measuring 260 sq. yards consisting of a basement, ground floor, first floor and second floor and thereafter, the parties had divided the suit premises amongst them and started carrying on their respective businesses therefrom. The appellants have also categorically admitted to their being in possession of the ground floor and second floor and the respondents being in possession of the basement, first floor and the terrace above the second floor.

22. In view of the aforesaid facts and circumstances, it is clear that there is no dispute that the appellants and the respondents are occupying specific portions of the suit premises, as per the terms recorded in the Agreement dated 8.7.2012. Though the appellants evaded any reference to the said document in the plaint, this fact is also borne out by their admissions in the

plaint. In their replication, the appellants have not taken any plea that required evidence for determination of the issues framed in the suit. In fact, the objections raised by the appellant are found to be flimsy and inconsequential and do not go to the root of the matter, deserving a full-fledged trial. Therefore, the plea taken by learned counsel for the appellants that evidence had to be led once issues had been framed, is found to be devoid of merits. As noted earlier, an application under Order XII Rule 6 CPC can be entertained at any stage of the proceedings.

23. A decision on issues No.2,3 and 4 framed on 3.9.2015 and reproduced in para 6 above, hinges on an interpretation of the terms and conditions embodied in the Agreement dated 8.7.2012 which is an admitted document. By no stretch of imagination can the said Agreement be termed as vague or ambiguous. It clearly records the consent of the parties that they had decided to split their business w.e.f. 8.7.2012 and had also decided to divide the suit premises on a floor-wise basis. The share of the appellants in the suit premises was of the ground floor and the second floor; the basement, first floor and the terrace above the second floor fell to the share of the respondents. As the terrace that came to the share of the respondents, was slightly more than that what had fallen in the share of the appellants, it was agreed between the parties that the respondent No.1 would pay a sum of Rs.7.00 lacs to the appellants. No where in the plaint or the replication have the appellants denied having received the aforesaid amount from the respondent No.1. Rather, they have admitted to the fact that they have been occupying the ground floor and second floor of the suit premises, which only goes to indicate that the parties had partitioned the suit premises by metes and bounds. Furthermore, the trial court is justified in observing that even

after being confronted with the Agreement dated 8.7.2012, the appellants did not take any steps to seek cancellation of the said document. Their lame excuse that the said document could not be treated as a partition deed as it had not been registered, cannot be a ground to ignore the said document when its execution has not been denied by the appellants at any stage. In fact they have acted on the said documents, as noted above.

24. The argument of the learned counsel for the appellants that the appellant No.2 and the respondent No.2, who are also owners of a part of the suit premises, were not signatories to the Agreement dated 8.7.2012, loses meaning when neither of them have disputed the fact that they have acted upon the said agreement and are exclusively occupying their respective floors in terms of the said document. Moreover, as would be apparent from a perusal of para 5 of the plaint, even the appellant No.2 has not denied execution of the said agreement and the fact that she and her husband have acted upon the same; nor have the appellant No.2 and the respondent No.2 laid a challenge to the aforesaid document executed by their respective husbands.

25. Given the aforesaid facts and circumstances, this Court finds force in the observations made by the learned trial court that it was a fit case where a judgment on admission could have been passed in view of the Agreement dated 8.7.2012 executed by the appellant No.1 and the respondent No.1, recording the manner in which the suit premises was to be partitioned by metes and bounds and that the said document had been acted upon and given effect to as the parties were actually in possession of the portions as finds mention in the said agreement.

26. In view of the express admissions made by the appellants as embodied in the Agreement dated 8.7.2012 and the implied admissions made by them in the pleadings of the suit, wherefrom admissions can be gathered constructively, this Court is of the opinion that the suit for partition instituted by them is devoid of any cause of action and the plaint ought to have been rejected under Order VII Rule 11 CPC. The trial court had every reason to allow the application filed by the respondents under Order XII Rule 6 CPC and dismiss the suit for partition filed by the appellants on the ground that the premises already stood partitioned by metes and bounds and the parties are already in occupation of specific floors of the suit premises and are enjoying their shares exactly in terms of the Agreement dated 8.7.2012.

27. Accordingly, the appeal is dismissed *in limine* along with the pending application, being meritless.

MARCH 29, 2017
sk/ap

HIMA KOHLI, J