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

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***Date of decision: 30.11.2017***

+ CS(OS) 38/2014 and I.A.No.197/2014

INDRA KAUSHAL & ANOTHER ..... Plaintiffs  
Through Mr.O.P.Aggarwal & Mr.K.N.Singh,  
Advs.

Versus

RAVINDER KAUSHAL & OTHERS ..... Defendants  
Through Mr.Rajesh Singh, Adv.for D-1 & 2.

**CORAM:**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.(ORAL)**

**IA No. 2067/2015(u/O XII Rule 6 CPC)**

1. This application is filed under Order XII Rule 6 CPC seeking passing of a decree on admissions.
2. This suit is filed seeking a decree of partition in respect of the property bearing No.24/1, Shakti Nagar, Delhi-110007 claiming 2/5<sup>th</sup> share as that of the plaintiffs and 3/5<sup>th</sup> share of the defendants; a decree for possession is also sought for the 2/5<sup>th</sup> share of the plaintiffs; and a decree for *mesne profits* @ Rs.50,000/- per month.
3. It is stated in the plaint that Dr.S.S.Kaushal, the father of the plaintiffs, defendants No.1 and 2 and Late Sh.Rajiv Kaushal who is now represented by defendant Nos.3 to 5 owned the said property bearing No.24/1, Shakti Nagar, Delhi-110007 measuring 500 sq.yds comprising of ground floor, first and second floor. Dr.S.S.Kaushal expired on 24.02.1998.

His wife had expired prior to his death. It is stated that during his life time Dr.S.S.Kaushal executed a Registered Will dated 17.08.1994 in respect of the suit property in favour of the plaintiffs and his three sons. The plaintiffs were given two living rooms and one dressing room adjacent to the bath room on the ground floor, which is shown in red colour in the site plan. In addition the bath room and latrine in the mid-stairs and miyani above the clinic was also given to the plaintiffs. The said portion was said to be in possession of the plaintiff jointly. However, on return from USA on 22.03.2012, plaintiff No.1 found the portion to be locked, and all the articles/belongings of the plaintiffs kept in their portion were removed/stolen. The plaintiffs were also not allowed to enter into the said premises. It is stated that they have been forcibly dispossessed by defendant Nos.3 and 4 and appropriate police complaint is said to have been lodged with Police Station, Shakti Nagar, New Delhi. A suit was also filed under Section 6 of the Specific Relief Act, 1963. However, the said suit was withdrawn with liberty to file a fresh suit before this court.

4. The learned counsel appearing for defendant Nos.1 and 2 submits that they oppose the prayer in the suit but they have no objection in case the plaintiffs are given possession of the portion of the property bequeathed to them as per Will of Late Dr.S.S.Kaushal dated 17.08.1994 as owners thereof.

5. None has appeared for defendant Nos.3 to 5 despite a pass over. I may also note that defendants No. 3 to 5 have not filed any reply to the present application of the plaintiff under Order XII Rule 6 CPC. A perusal of the written statements filed by the said defendants would show that they have denied the execution of the Will dated 17.08.1994 and claimed it to be a

forged and fabricated document.

6. The learned counsel for the plaintiffs has pointed out that if for some reasons this court comes to conclusion that Late Dr.S.S.Kaushal did not validly and legally execute the said Will dated 17.08.1994, in that eventuality, the plaintiffs would be entitled to 2/5<sup>th</sup> share in the suit property. It is submitted that 2/5<sup>th</sup> share which the plaintiffs would be entitled in case of intestate succession would be a larger share than that has been bequeathed in favour of the plaintiffs by their father Late Dr.S.S.Kaushal. He submits that even if defendant Nos.3 to 5 deny the validity and legality of the Will dated 17.08.1994 executed by Late Dr.S.S.Kaushal, the plaintiffs still have rights in the suit property, namely 2/5<sup>th</sup> share.

7. Order 12 Rule 6 CPC 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 an 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.”

8. Catena of judgments of this court and the Supreme Court have settled the requirement of Order 12 Rule 6 i.e.:

- (i) ***Vijaya Myne v. Satya Bhushan Kuara 142(2007)DLT483(DB)***
- (ii) ***Usha Rani Jain v. Nirulas Corner House Pvt. Ltd. 2005(12) ILR (Del.)349.***
- (iii) ***Bhupinder Singh Bhalla v. Neelu Bhalla@Neelam Singh***

**2014(207)DLT 572**  
**(iv) *Himani Alloys Ltd. v. Tata Steel Ltd. (2011) 15 SCC 273***

9. Reference may be had to judgment of Supreme Court in the case of ***Himani Alloys Ltd. v. Tata Steel Ltd. (supra)*** wherein the Court held as follows:-

“9. It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a Defendant to contest the claim. In short the discretion should be used only when there is a clear 'admission' which can be acted upon.”

10. Admissions can be inferred from vague and evasive denials or admissions can even be inferred from the facts and circumstances of the case.

11. A perusal of the written statements of defendants No. 3, 4 and 5 would show that the said defendants have denied the execution of the Will by Late Dr.S.S.Kaushal. It is their case that the Will is forged and fabricated. They further plead that Late Dr. S.S.Kaushal had adequately compensated both his daughters, namely, the plaintiffs at the time of their marriage and as such after their marriage, the father during his lifetime as per his wish

distributed the suit property only amongst his three sons, namely, the defendants. Hence, there was no room left for the father Dr.S.S.Kaushal to execute any Will or Codicil. It is urged that the three sons as per the wish of Dr. Kaushal have been residing in the above noted family property.

12. It is quite clear that the parties, namely, the plaintiffs and defendants No. 1 and 2, late Sh. Rajeev Kaushal (now represented by defendants No.3 to 5) are children of Dr. S.S.Kaushal. Their mother had died prior to the death of Dr.Kaushal. Parties admit that the suit property was owned by Late Dr. S.S.Kaushal. The effect of admission of these facts is that in the absence of a will under Section 8 of the Hindu Succession Act read with Schedule, the property of Dr.Kaushal will devolve upon sons, daughters and the heirs of the deceased son who are relatives specified in Class I of the Schedule of the Hindu Succession Act.

13. However, in the course of arguments both learned counsel for the plaintiffs and defendants No. 1 and 2 have agreed that a decree may be passed in favour of the plaintiffs conferring title and also a decree of possession on the property that was bequeathed to the plaintiffs by Late Dr.S.S.Kaushal by his registered Will dated 17.08.1994. It is manifest that the portions that is bequeathed to the plaintiffs is less than the  $\frac{2}{5}$ <sup>th</sup> share they are entitled to under the Hindu Succession Act. In view of the admissions in the written statement of the defendants No. 3 to 5, in my opinion this is a fit case to pass a decree in favour of the plaintiffs and against the defendants as above.

14. The application is accordingly allowed.

**CS(OS) 38/2014**

15. Accordingly, a decree is passed in favour of the plaintiffs and against

the defendants for partition of the suit property whereby the plaintiffs shall be entitled to the portion shown in red colour as per Will of Late Dr.S.S.Kaushal dated 17.08.1994. A decree of possession is also passed in favour of the plaintiffs and against the defendants for the said portion as noted above.

16. As this decree has been passed by the consent of the plaintiffs and defendant Nos.1 and 2, the learned counsel for the plaintiffs does not press any other relief.

17. Suit is disposed of as above. Pending applications also stand disposed of.

**JAYANT NATH, J.**

**NOVEMBER 30, 2017/v**